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LOWMAN, LOUISE et al. VS. DEPARTMENT of SOCIAL SERVICES NEWYORK 1968

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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

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Plaintiffs,

vs.

DEPARTMENT OF SOCIAL SERVICES OF THE
CITY OF NEW YORK, JACK R. GOLDBERG,
as Commissioner of the Department
of Social Services of the City of
New York, DEPARTMENT OF SOCIAL
SERVICES OF THE STATE OF NEW YORK,
GEORGE K. WYMAN, as Commissioner of
the Department of Social Services
of the State of New York, GEORGE
W. CHESBORO, as Acting Commissioner
of ________________________________
________________, JAMES CALLISON, as
Regional Commissioner of the
United States Department of Health,
Education and Welfare,

Defendants.

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COMPLAINT

I

1. This is an action for injunctive and declaratory relief authorized by Title 42 U.S.C. §1983 to secure rights, privileges and immunities established by the Fourteenth Amendment to the Constitution of the United States and the Social Security Act, Title 42 U.S.C. §301 *et seq.*, and the regulations promulgated thereunder. This action seeks an injunction and declaratory judgment to restrain the defendants from applying, enforcing, executing and implementing the "Simplified Payment System" promulgated by defendant GOLDBERG and approved

by defendant State and Federal officials, insofar as that System denies recipients the opportunity to continue to receive grants under prior and existing New York law for demonstrated individual need for items of clothing and household furniture and supplies.

II

JURISDICTION

Jurisdiction is conferred on this Court by (a) Title 28 U.S.C. §1343(3) and (4) providing for original jurisdiction of this Court in suits authorized by Title 42 U.S.C. §1983; (b) by 28 U.S.C. §§2201 and 2202 relating to declaratory judgments, by 28 U.S.C. §1331 relating to actions arising under the laws and Constitution of the United States wherein the sum in controversy exceeds $10,000. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.

III

PLAINTIFFS

The plaintiffs are members of a class composed of recipients of public assistance in New York City who have been injured as a result of the institution of the Simplified Payment Plan challenged here.

[More Information]

Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all members of their class. The persons in the class are so numerous that joinder of all members is impractical. There are questions of law or fact common to the class; the claims of the representative parties are typical of the claims of the class; and the representative parties are typical of the parties in the class; the representative parties will fairly and adequately protect the interest of the class as to those issues relating to the class. Defendants have acted in ways which are generally applicable to members of the class.

IV

DEFENDANTS

The defendants are DEPARTMENT OF SOCIAL SERVICES OF THE CITY OF NEW YORK, JACK R. GOLDBERG, as Commissioner of the Department of Social Services of the City of New York, DEPARTMENT OF SOCIAL SERVICES OF THE STATE OF NEW YORK, GEORGE K. WYMAN, as Commissioner of the Department of Social Services of the State of New York, GEORGE W. CHESBORO, as Acting Commissioner of

JAMES CALLISON, as Regional Commissioner of the United States Department of Health, Education and Welfare.

V

STATEMENT OF CLAIM

1. Like all other states, New York cooperates with the Federal Government in extending public assistance to needy persons, as authorized in the Social Security Act of 1935. Pursuant to that legislation, New York State and the federal governments extend aid to the aged (APA), the blind (AB), the permanently and total disabled (AFD), and families with dependent children (ADC). In fulfillment of its obligations under federal legislation, the State of New York has implemented a plan for the provision of assistance to eligible needy persons.

2. Pursuant to this plan, Defendant Department of Social Services issues to eligible individuals and families a semi-monthly check for food, rent and other items of basic subsistence. Social Services Law §20, 34, 18 NYCRR 352.4. This action does not specifically raise any issue in regard to the amount of these regular semi-monthly checks or the manner in

which they are issued.

3. Recognizing that the regular semi-monthly check does not and cannot cover all basic needs of families and individuals, New York law provides for the issuance of special grants on an irregular basis to meet particular items of need, such as home furniture, kitchen supplies, school clothing and the like. Prior to September 1, 1968, the Defendant New York City Department of Social Services, pursuant to Social Services Law §20 and §34 and 18 NYCRR 352.5 issued financial grants for these certain "special or "non-recurring" needs based on individual client request and individual caseworker verification. This provision for special grants recognized that individuals came to public assistance with varying needs in terms of major items of clothing and furniture and that individuals, including children, continued to have varying needs for such items which were not met by the basic recurring subsistence grant. Accordingly it required that special needs grants be given from time to time to bring people up to a certain minimal and equitable levels of decency. The recurring welfare grant does not cover these major items and could not equitably do so since the regular grant is for a fixed amount, while individual needs for these major special items vary.

One application of these provisions, styled minimum standards, was to bring families and individuals up to standard at the time of going on public assistance by the special grant of money for furniture and clothing deemed essential. Another application was to replace items of furniture, and clothing as these became worn out, unsafe or a hazard to health. Caseworkers were charged with the responsibility of ascertaining family and individual need for these items during their periodic 3 month or 6 month home visit.

While the statute and regulations remain unchanged, special grants for major items of clothing and furniture are no longer available for persons and families residing in New York City. The Simplified Payment System has been instituted for New York City based on United States Department of Health, Education and Welfare demonstration grant authorized Aug. 15, 1968 by James Callison, Regional Director, the relevant portions of which are attached hereto as Exhibit 1. The Federal demonstration grant was allegedly based upon 42 U.S.C. §1315 and it is implemented by City of New York Department of Social Services Procedure No. 6842, attached hereto as Exhibit 2. Under this

Simplified Plan a "flat grant" of $25 per quarter is to be paid to each client as a substitute for the prior non-recurring grants for special individual needs for home furnishings and clothing.

VI

As a FIRST claim for relief plaintiffs allege:

1. The Simplified Payment Plan violates the Social Security Act and the regulations made pursuant to it because it is not a plan of uniform state-wide application. Public Assistance recipients in New York City are singled out for special, disfavorable treatment.

2. Sections 2(a)(1), 402(a)(1), 1202(a)(1), 1402(a)(1), 1602(a)(1), of the Social Security Act, 42 U.S.C. §§302(a)(1), 602(a)(1), 1202(a)(1), 1352(a)(1), 1383(a)(1), require that a state plan for categorical assistance benefits must "provide that it shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them; . . . ." As interpreted by the Department of Health, Education, and Welfare in its "Handbook on Public Assistance Administration," the statute requires that the plan "shall be in operation, through local offices, on a State-wide basis and provide for administration in accordance with standards that are mandatory and equitable

throughout the State." Pt. II §4200(1) (1964).

> "The purpose of the requirements relating to State wide operation is to assure that the public assistance programs in which there is Federal financial participation, be in effect throughout the State; . . . that the benefits of the programs will equally available to all eligible persons; and that State policies, standards and methods will apply equally to persons in like situations wherever they may live." Pt. II §4300 (1964).

2. The Simplified Payment System clearly conflicts with the requirement that "policies, standards, and methods . . . apply equally to persons in like situations wherever they may live" since New York City residents are treated differently from residents of other parts of New York State in two material respects. First, payments are made at a flat rate instead of in accordance with individual need, and, more invidiously, the average level of payment in New York City has been significantly lowered.

VII

Also a SECOND claim for relief, the plaintiffs incorporate Part VI an further allege:

1. There has been no valid waiver of the requirement of state-wide uniformity. Under 42 U.S.C. §1315 (1967) the Secretary of the Department of Health, Education and Welfare has statutory authority to grant a special exemption to the requirements of 42 U.S.C. §§302, 602, 1202, 1352 and 1383. "[i]n the

case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives" of the categorical assistance programs. Cf. §2, p. 6.

2. The defendants have justified this Plan for special and discriminatory treatment of the indigent citizens of New York City as demonstration project under Section 1115 of the Social Security Act, 42 U.S.C. §1315.

3. On information and belief, the New York Department of Social Services on August 15, 1968 applied for a waiver of the requirement of state-wideness under Section 1115 in connection with the flat grant project. On August 16, the purported approval of this application was given by Letter of Regional Commissioner James Callison to Joseph Chesbro, Acting Commissioner, New York Department of Social Services. Application and approval of demonstration project attached hereto as Exhibit I.

4. On information and belief, the waiver of state plan requirements is invalid because the motivation, purpose and effect of this purported demonstration project was to penalize the plaintiffs and the class they represent for: exercising their First

Amendment rights to organize themselves and others; disseminating information about individual rights under the public assistance programs, and; petitioning the defendants for grants for the items of need which the New York statute and regulations have established as necessary to meet a minimal level of decency.

5. On information and belief, under the leadership of the City-Wide Coordinating Committee of Welfare Groups, affiliated with the N W R O which formed early in 1966, thousands of welfare recipients were informed of their rights under law and given impetus and encouragement to assert them. One purpose and effect of this organizational and educational effort was to enable an increasing number of people to obtain the items of essential need which the New York law guaranteed them and to combat administrative practices aimed at nullifying the special grant provisions. The level of special grants increased from an average of $40 per person per year in 1965 to a projected average of nearly $200 per person per year by the summer of 1968. (Section____________, *infra*.) The recipients increasing awareness of their rights also reflected itself in a steadily increasing number of applications for assistance and in an increasing proportion of acceptance to the rolls of those who applied.

A Columbia study in 1965 showed that 58 out of 100 applications for Aid to Dependent Children were accepted; by June 1968, the figure was up to 81.6%. City of New York, Department of Social Services, Monthly Statistical Report, June 1968, p. 9.

6. Upon information and belief, in June 1968 the defendants made plans to institute a state-wide flat grant program and to eliminate grants for special needs through administrative changes. (New York Times, June 26, p. 27; June 27, p. 31.); But after announcement of the plan, considerable opposition developed. Subsequently, at a hearing in executive session before the New York Joint Legislative Committee to revise the Social Welfare Laws, State Budget Director, T. Norman Hurd informed the defendants that their proposal could not be instituted without legislative approval. (N. Y. Times, July 4, 1968, p. 29.) Rather than seeking legislative change, an action which would have given the plaintiffs and others an opportunity to express their views on the flat grant system and explain the debilitating and inequitable consequences which they believe will result, the Defendants short-circuited the traditional processes for changing the law, and circumvented the existing requirements of the New York statutes and regulations as they apply to 80% of the recipients

of public assistance in New York State by requesting a special waiver of state plan requirements under the guise of a "demonstration project for New York City.

7. On information and belief, application for the institution of a Demonstration Project was filed on August 14, 1968 and granted the next day. One of the primary reasons for the extreme haste in seeking and obtaining approval for this Simplified Payment Plan was to circumvent a planned effort by recipients of public assistance to obtain minimal items of school clothing for their children.

8. The "demonstration project" has been instituted to make manifest to the plaintiffs and the class they represent that State guarantees of minimal standards of decency will be withdrawn if the clients attempt to assert those rights. The establishment of a program of such punitive purpose and effect is plainly not a demonstration project "designed to help needy persons achieve self-support or self-care or to maintain and strengthen family life."

VIII

As a THIRD cause of action, plaintiffs incorporate Part VII, and further allege:

No p. 11

1. The purported authorization of the Simplified Payment Plan was ineffective because needed changes in state law were not first obtained. The Federal Regulations require that "when waiver of a plan requirement . . . (is) requested under section 1115, the State agency must: . . . (2) Give assurances of its legal authority to conduct the project." Handbook of Public Assistance, Pt. IV §8420. The Regulations further recognize that "federal authority to waive plan requirements in the Social Security Act will often have to be supplemented by permission from appropriate authorities to waive State laws, rules, and regulations." Handbook, Pt. IV, §8433.

2. These requirements were clearly not met prior to the application for the institution of the Simplified Payment System. While Section 36-a of the New York Social Welfare Law authorizes the Department of Social Welfare to conduct demonstration projects "designed to ascertain and eliminate the causes of dependence and to rehabilitate recipients of public welfare assistance and care," the section authorizes no funds to be used for such projects. In this case, the New York City Department of Welfare is attempting to use for the flat grant project funds which were provided for use under the special needs regulations. Plaintiffs allege that this expenditure, not contemplated by the legislature is invalid

under New York law. It was because legislative approval of the state-wide flat grant plan could not be obtained that the federal demonstration project was sought.

IX

As a FOURTH cause of action, plaintiffs incorporate Part VII, and further allege:

1. The Simplified Payment Plan is not a valid demonstration project because its principle practical effect is to lower the amount of the grant which individuals may receive to meet their needs for clothing and furniture.

2. The Federal Regulations provide that the basic purpose of a demonstration project is "to develop and improve the methods and techniques of administering assistance and related services." Handbook, Pt. IV, §8431. They do not permit demonstration projects to be utilized to lower the levels of assistance available for a particular class of individuals or of families. They suggest that demonstration projects may be instituted to increase the level of assistance for a particular group of people; to meet needs not otherwise met by public assistance; to test changes in administrative proceedures which do not change the level of the grant available but simply effect the manner in which the grant

is given. See Exhibit 3 attached hereto for examples of demonstration projects.

3. Congress did not intended and the Department of Health Education and Welfare has never previously allowed a demonstration project to be used as a vehicle for lowering the level of assistance to a particular group within a state.

4. Defendants, by admission, acknowledge that in order for the Simplified Payment System "to be a genuine demonstration that the cyclical recurring grant must be expected to meet the overwhelming majority of what the agency has traditionally defined as 'special' needs." Proposal, Exhibit 1.

5. The figures published by the Defendant New York City Department of Social Services indicate that during July 1968, there were ________ individuals receiving public assistance and _______ was distributed in special grants for clothing and furniture. If the monthly rate for July were maintained through the coming year an individual would receive __________ per person per year in special grants. In the month of June, 1968, over fourteen million dollars ($14,074,423) was distributed in special grants for furniture and clothing to the 872,240 clients on the rolls during that month. Projected over a year this amounts to one hundred and ninety-three dollars ($193) per person per year. In May 1968,

over ten million dollars were distributed in these special grants for items now covered in the Simplified Payment. If the May figures are projected over a year, an individual could expect to receive one hundred and fifty dollars ($150) in special grants over a year.

6. Two relevant conclusions must be drawn from these facts. First, even if special grants continued to be requested and granted at the rate existing at the time the proposal for the Simplified Grant System demonstration project was approved, the figure of one hundred dollars per person per year represents a drastic reduction in the amounts available for items of special needs. Second, the figures reveal a steady increase in the amounts that have been given to meet clients needs for clothing and furniture. (Also see Exhibit 4, attached hereto). The rate of distribution of special grants would be expected to continue to increase because: (a) the past pattern is one of constant increase; (b) although many hundreds of clients have been organized and informed of their rights under New York Law, even more remain ignorant of their rights and their needs for clothing and furniture remain unfilled; and (c) an increase could reasonably be expected in the fall months as money is needed to buy children the minimal items of clothing they need to attend school and the

warm coats, hats and galoshes needed to weather the winter months which were previously granted under the special needs system. Thus even if the grant under the Simplified Payment Plan had been set at the July rate of ________ per person per year, the result of the change would have been a lessening of assistance available.

X

As a FIFTH cause of action, plaintiffs incorporate Part VII and Part IX, and further allege:

1. The purported waiver of the requirements of the New York state plan and the Social Security Act is invalid because it was obtained through the Defendants fraudulent misrepresentation of the scope and effect of the proposed demonstration project.

2. Defendants Chesboro and Goldberg in their proposal for a Simplified Payment System (Exhibit I) failed to explain that the prinipal effect of the System will be to lower the grants of New York City recipients. The proposal recites that the Defendants ask to make "an innovation in the administrative machinery and procedures for special grants." As the Defendants state in their proposal that "it is clear that the introduction of cyclical

payment . . . (does not result in) an increase in the level of assistance payments." That the Simplified Payment System represents no increase in the grant is not contested. In the context of the fact that the Simplified Payment actually results in a decrease of payments available for special needs, the Defendant's assurances that there will be no increase is a non-sequ~~e~~it~~o~~ur. Defendants state with such assurance in their proposal that there would be no increase, but they fail to specify the amounts of the grants for special needs which were given under the then existing special grant system or to compare those amounts with the proposed figure of $100 per year.

3. In characterizing the proposed change as simply "an innovation in the administrative machinery and procedure for processing special grants," the Defendants flagrantly misrepresented the effect of their proposed action. Since the figures recited in Part XI, supra, are obtained from the Defendants' reports and records it would be unreasonable to assume that they were ignorant of the fact that the actual effect of the Simplified Payment System would be to lower the payments for typical clothing and furniture from _______ or more per person per year to one hundred dollars per person per year.

4. The defendant state and city officials have further misled and deceived the defendant Regional Commissioner of Health Education and Welfare by utilizing the limited approval of the change embodied in the demonstration approval as a carte blanche for applying, enforcing, executing and implementing other related changes in the law not authorized in the demonstration, all to the great loss, damage and detriment of the plaintiffs and the class who they represent. The approval given by defendant Callison does not nor can it authorize the abolition or waiver of the provisions of New York law which specify the items which comprise the "minimum standards" necessary for a minimum standard of decency. The approval of Regional Commissioner Callison provides that the demonstration project "involves a new method of making grants to cover special needs for clothing and household replacements." The cyclical grant of one hundred dollars per year is to be utilized only to make replacement of items with which the individual or family was initially provided and which have subsequently become unusable or unfit for their purpose. The approval does not authorize the New York Department of Social Services to refuse to supply--on the basis of individual application and individual determination of need--the items which are needed to inititally

bring an individual or family up to the minimal level.

5. Under the Demonstration project approved by Regional Commissioner Callison, the automatic cyclical grant covers only the replacement of major items which are needed after an individual or family has initially been brought up to the minimum standard. Many recipients of public assistance will already possess these items of need when they begin receiving assistance and they will receive nothing beyond the cyclical grant of $100 per year for replacements. Others, such as Plaintiff________________, will possess virtually nothing at the time they apply for assistance and they must initially be brought up to minimal standard as required by prior and existing law before the recipient will be expected to provide for replacements from the cyclical grant provided under the Demonstration Project.

6. On information and belief, the uniform practice of the denendant Department of Social Services since September 1, 1968 has been to refuse to issue grants to initially supply items to bring up to minimal standards individuals who have recently applied for public assistance or who for other reasons have never been initially supplied with the items required by New York law.

The Defendant Department of Social Services refuses to supply moneys for minimal standards on the alleged ground that the Simplified Payment System no longer permits such grants. Said interpretation and application of the Simplified Payment System is contrary to its presentation to HEW and contrary to the exemption from a uniform plan granted by the HEW Regional Director.

7. The deception in the proposal and the consequent approval of a demonstration predicated on a fradulent statement of existing conditions and proposed actions, make the purported waiver void, invalid and without effect. The Simplified Payment System as proposed and approved does not authorize the abolition of the specification of minimum standards. It does not authorize the defendant Department of Social Services to refuse to bring destitute individuals and families up to this standard in the first instance. It is an abuse of discretion for the Department of Health, Education and Welfare to approve a demonstration project which has the effect of lowering the grant available to a particular class of people within a state. Here however, the objection is even stronger since the Regional Commissioner was unable to exercise any legitimate discretion since he was deceived and not informed of the relevant facts and the proposed actions which he needed to know to properly exercise whatever discretion he has.

XI

As a SIXTH cause of action, plaintiffs incorporate Part VII, and further allege:

1. The purported waiver of state plan requirements is invalid because the Defendant Callison, Regional Director of the Department of Health, Education and Welfare, lacked authority under the federal statute and regulations to grant such a waiver or to approve the demonstration.

2. The Social Security Act provides that the Secretary of the Department of Health, Education and Welfare may waive compliance with the relevant sections of the Act. 42 U.S.C. §1315. The Regulations also emphasize that it is the Secretary himself who is to approve demonstration projects. Handbook, Pt. IV, §8433.

3. In approving the demonstration project Defendant Callison does not purport to act upon any authority except his own. He does not purport to have acted on the authority of or in consultation with the Secretary or the Bureau of Family Services or anyone else.

4. The Secretary of Health Education and Welfare could not validly delegate to the Regional Commissioner of Health, Education and Welfare the power to waive the requirements of

the Social Security Act or the duly approved State plans. [Cudahy Packing Co. of Louisiana v. Holland, 312 U.S. 357, 62 S. Ct. 651, 86 L.Ed. 895 (1942)] A decision to waive the requirements of the Social Security Act and the New York State Plan is not routine or ministerial but rather represents a major change in the public assistance laws and a substantial detriment to the eight per cent of New York's public assistance recipients who reside in New York City.

XII

As a SEVENTH cause of action, plaintiffs incorporate Part VII, and Part IX,and further allege:

1. The purported demonstration prouect is invalid because it was authorized without compliance with the procedures required for examination of the significance, practicality and effectiveness of the program to "help needy persons to attain self-support or self-care and strengthen family life."

2. The Regulations of the Department of Health, Education and Welfare mandate that extensive consideration be given to the ramifications and impact of a proposed demonstration project. Handbook of Public Assistance, Pt. IV, §8436.

3. On information and belief, in approving demonstration projects the uniform prior practice, under the Statute and Regulations, has been to prepare comprehensive studies of the impact which a demonstration will have on various types of individuals and families. These studies, directed by a budgetary expert in the Bureau of Family Services in Washington, determine whether a particular demonstration will have an actual effect of penalizing any particular group (for example, families with young children or those with teen-agers). Proposed demonstrations which substantially injure any particular group of recipients may not be approved.

4. On information and belief, the demonstration project requested by New York was not subjected to this required analysis. The request was made one day and approved by defendant Callison on the next day. The proposal itself reveals only the sketchiest description of the goals of the Plan, the methods to be utilized and the means by which the demonstration is to be evaluated. The plan provides that grants for "special" or "non-recurring" grants for furniture and clothing will be eliminated and a cyclical series of centrally authorized grants of $100 per person per year will be substituted. The cyclical payments will be made on

September 1, December 1, April 1, and July 1. The plan represents that this amount will "be expected to meet the preponderance of what have traditionally been defined as "special" needs. The plan asserts that "the agency must continue to maintain the capacity to respond to those situations which are genuinely "special" or "non-recurring" and goes on to define categories of such genuinely "special" needs. These are: (1) Special needs other than clothing and household replacements; (2) Replacement of clothing and household possessions destroyed by disaster; and (3) expenses for household furnishings for families relocating from furnished to unfurnished housing. The plan recites that its purpose is to more equitably distribute funds for special needs, recognized the dignity of clients, relieve workers of the burden of individual determinations of need, separate income maintenance and social service functions, and provide a "testable" model for the administration of assistance. The bare outline of a plan supplied by New York in their application does not meet the Federal requirements that the application "include a precise description of goals, innovative methods or approaches, . . . criteria used (in evaluation), the result to be achieved and any major problems anticipated." The Regulations require that the plan "clearly outline the methods to be used for evaluating the goals . . . contained in the application." New York's plan simply says "the Department will determine the informational needs necessary for evaluation purposes, and will devise a mechanism for information reporting and will evaluate operational data in terms of the projects goals."

5. The failure of Defendant Callison to comply with the requirements of the Federal Regulations and to comport with the uniform prior practices for examination of proposed demonstrations resulted in the approval of a proposal premised on a gross misrepresentation of existing conditions and of the effect of the demonstration.

XIII

As an EIGHTH cause of action, plaintiffs incorporate Part VII and Part XI,and further allege:

1. On information and belief, that the Simplified Payment Plan is an invalid demonstration project because the figure of one hundred dollars per person per year was arrived at in an arbitrary manner. The figure is totally unrelated to the amounts that recipients of public assistance were able to receive under the prior law and equally unrelated to reasonable

costs of the items which prior state and federal law have determined are necessary to maintain a minimal level of decency, and which the Plaintiffs are expected to purchase with this grant.

2. On information and belief, that this figure of $100 was not arrived at through an examination of the amounts legitimately requested and given in the recent past and a projection of estimated need for the future. Nor was the figure obtained through analysis of the cost of necessary items by the Homemakers and other experts employed by the Defendant Department of Social Services. Nor was the figure obtained through reasonable estimates of public funds available for these items. Rather the figure was selected in a purely arbitrary fashion.

3. Since the one hundred dollar figure upon which the proposed demonstration was predicated was arrived at in a totally arbitrary and capricious manner wholly unrelated to typical or particular individual needs or to the cost of necessary items, the purported demonstration is invalid.

XIV

As a NINTH cause of action, plaintiffs incorporate the allegations of Part IX and further allege:

1. Indigent citizens of New York State living outside of New York City, are presently able to receive grants for items of special need for furniture and clothing based on individual client request and individual caseworker verification.

2. Under the rules and regulations and practices utilized pursuant to the Simplified Payment System demonstration project, public assistance recipients in New York City may not receive grants for items of special need for clothing and furniture, except when clothing and household possessions are destroyed by a disaster or when a family relocates from furnished to unfurnished housing. The $100 per year cyclical grant given to New York City residents in place of the special grants for individually verified items of clothing and furniture need is substantially less than the amount of money typically supplied the prior system. It is, in many cases, totally inadequate to purchase the items which New York has determined are necessary to live at a minimal standard of decency.

3. This substantially different treatment of the needs for major items of clothing and furniture of persons living in New York City and those living in other parts of New York State is an invidious discrimination based solely on a factor of residency and totally unrelated to individual need. This discrimination

deprives plaintiffs and others similarly situated of the equal protection of the laws guaranteed by the Fourteenth Amendment.

5. The invidious and unjustifiable nature of a discriminatory shceme which would supply residents of New York City with substantially lesser amounts to meet their needs for furniture and clothing than is supplied to residents in other areas of the State, is compounded by the fact that the cost of these needed items is actually greater for individuals who live in New York City. Defendants, by admissions, have acknowledged that it costs more to live in New York City and Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester counties, than it does in other areas of the State. 18 NYCRR 352.4.

XVI

As a TENTH cause of action, plaintiffs incorporate the allegations of Part IX, and further allege:

1. The application for the Simplified Payment System demonstration project was made on August 1~~5~~4, 1968 and approval was given on August 1~~6~~, 1968. Information as to this application and approval was not made public until August 26, 1968. (N.Y. Times, Aug. 27, 1968, p. 1.) The Simplified Payment System took effect on September 1, 1968.

2. At the time the plan took effect there were many welfare recipients who had been recently supplied with the money to purchase the items which comprise the standard required for a minimal level of decency. There were many hundreds of thousands more recipients of public assistance who lacked these minimal items and who had not yet learned of their right to receive--upon request and verification--the grants to purchase them. Still others had made application prior to September first for items of special needs and had not had their needs verified. Yet others had made application and had had needs verified but had not been issued checks by September first--sometimes because of normal administrative delay and in other cases because of Departmental error.

(GOOD PLACE TO ADD DETAILS ABOUT OUR PARTICULAR PLAINTIFFS.)

3. The institution of the Simplified Payment System on September first, with no provision for supplying retroactively those special grants which had been requested or verified before that date, and no provision for initially bringing each client up to the level of minimum standards before requiring them to

provide for replacements out of the cyclical grant drew an invidious line creating two classes of recipients of public assistance. One class of those who had been brought up to the minimum standard on September first are able to use their cyclical grant to purchase replacements of major items. The other class must use this wholly inadequate sum to provide for the initial purchase of these major items and to buy needed replacements.

4. This discrimination based on the individual's circumstances on the arbitrarily selected date of September first is totally unjustified and denies that plaintiffs and the class who they represent the equal protection of the law guaranteed to them by the Fourteenth Amendment of the Constitution.

XIV

As an ELEVENTH cause of action, plaintiffs incorporate Part IX, and further allege:

1. The institution of the Simplified Payment System violates the requirement of 42 U.S.C. 402(a)(23) (1967) which provides that "by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living cost since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have

been proportionately adjusted." [Emphasis added].

2. By virtue of this provision, enacted 2 January 1968, the States are currently under an obligation to begin making changes in the levels of the grants supplied to recipients of categorical assistance to reflect changes in the cost of living.

3. Levels of assistance in New York State effective at the time of enactment of this Congressional mandate, were set forth in departmental regulations issued September 30, and April 30, 1967. Payments available to a family of four in New York, exelusive of rent and special needs for furniture and clothing, ranged from 1725.60 to 2217.60. See Exhibit ____ attached hereto.

4. On August 26, 1967, defendant state and city officials, announced, in conjunction with the institution of the Simplified Payment System, that effective October 1st, the basic welfare grant was being raised approximately six percent to account for rises in the cost of living. At the same time the separate regular allowances for the cost of laundry was abolished and incorporated into the basic grant. After this purported six percent increase, the payments available to a family of four in New York ranged from 1824 to 2,376, exclusive of rent and special

needs.

5. The cost of living in New York State rose 4.6% in the period from September 1967 to August 1968. U.S. Department of Labor, Department of Labor Statistics.

6. When the amounts previously and currently available for items of special need are added to these basic grants and compared, it appears that New York has in fact substantially lowered the amount of assistance available to individuals and families in New York. Under the special needs system, a typical family of four, at the June level of grants for items of special needs, would receive $772 per year for special needs for clothing and furniture. Under the Simplified Payment Plan the same family will receive $400 per year for clothing and furniture. Thus the amounts available to a family of four, exclusive of rent, has decreased for every type of family in the past year. A family, with an oldest child of 5 years receives 11.3% less. A family in which the oldest child is 11 receives 8.3%.

7. Defendant state and city official have violated the provisions of the Social Security Act Amendments of 1967, by lowering in the past year the basic typical public assistance payments by from six to ten percent in the fact of a rise in the

cost of living of over four and a half percent.

As a twelth cause of action, plaintiffs incorporate Part IX and Part XVII and further allege:

1. The total amounts supplied to meet the needs of the indigents Plaintiffs and the class who they represent, and particularly the amounts supplied to meet their needs for clothing and furniture are so totally inadequate as to deprive plaintiffs of the right to life guaranteed by the Declaration of Independence and the due process clause of the Fourteenth Amendment to the Constitution of the United States.

2. The inadequacy of the grants available both under the special needs system and under ths Simplified Payment Plan is revealed by comparing these grants with a low cost but adequate budget for a family of four in New York City. We base our comparison on the Community Council of Greater New York's Family Budget Standard (FBS). This standard is widely recognized as the most authoritative budget of its kind for New York City. It has frequently been relied upon by the Department of Social Services of the City of New York, and by concerned public and private agencies operating in the social welfare field. These standards are based on information supplied by the Bureau of Labor Statistics of the U. S. Department of Labor. The Family Budget Standard is shown in Exhibit _____, attached hereto.

By this standard a family of four consisting of a mother and three children aged 16, 13 and 8, needs 3,778, exclusive of rent. Welfare supplies only 3,050.60 under the prior special grant system or 2824 under the Simplified Payment Plan. Particularly relevant for purposes of comparison are lines 1, 5 and 6, of Exhibit ___, for these lines include the budgetary items ostensibly supplied by the nee cyclical grant. The disparity between $400 yearly provided by the City and Family Budget Standard's $953.41 clearly demonstrates the inadequacy of the City's provision. Nor can the disparity be explained away by arguing that it can be covered by taking money from other categories of the recurrent grant for clothing and household purposes, for that grant also falls over $900 below the total Family Standard Budget. Thus, wholly apart from the deficiency for household and clothing items, the New York City budget is wholly inadequate. To say that recipients should make up the $553.41 deficiency for clothing and household equipment by redirecting funds from such a meager   is totally unrealistic.

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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

LOUISE LOWMAN, ELEANOR PHILLIPS, PHYLLIS LOWMAN, SOPHIA ABROM, METHA BURRELL, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

DEPARTMENT OF SOCIAL SERVICES OF THE CITY OF NEW YORK, JACK R. GOLDBER, as Commissioner of the Department of Social Services of the City of New York, DEPARTMENT OF SOCIAL SERVICES OF THE STATE OF NEW YORK, GEORGE K. WYMAN, as Commissioner of the Department of Social Services of the State of New York, GEORGE W. CHESBORO, as Action Commissioner of the Department of Social Services of the State of New York, JAMES CALLISON, as Regional Commissioner of the United States Department of Health, Education and Welfare,

Defendants.

COMPLAINT

I.

1. This is an action for injunctive and declaratory relief authorized by Title 42 U.S.C. § 1983 to secure and extend rights, privileges and immunities established by and under the Fourteenth Amendment to the Constitution of the United States and the Social Security Act, Title 42 U.S.C. § 301 et. seq, and the regulations promulgated thereunder. This action seeks an injunction and declaratory judgment to restrain the defendants from applying, enforcing, executing and implementing the "Simplified Payment System" promulgated by defendant GOLDBERG and approved by defendants State and Federal officials, insofar as that System unequally denies

to recipients within the City of New York the opportunity to continue to receive grants under prior and existing New York law for demonstrated individual need for items of clothing and household furniture and supplies, and perpetuates the system of inadequate and wholly insufficient public assistance. ?

II.

JURISDICTION

Jurisdiction is based upon:

(a) The First, Fifth, Thirteenth, Fourteenth and Fifteenth Amendments to the United States Constitution;

(b) Title 28, United States Code~~s~~, §1343, 2201, 2202 and 2281 et seq.

(c) Title 28, United States Code, §1331 and the amount in controversy exceeds $10,000.00, exclusive of interest and costs.

(d) Title 42, United States Code, §1981, 1983 and 2000d.

III.

PLAINTIFFS

1. As hereinafter more fully set out in parts IV through VIII

~~1.~~ The plaintiffs are members of the class composed of recipients of public assistance within the City of New York who have been injured and deprived of their constitutional and statutory rights as a result of the institution of the Simplified Payment Plan challenged here. The plaintiffs are black, non-white and white residents of the City of New York who were receiving public assistance prior to and subsequent to the implementation of the Simplified Payment Plan. ?

2. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all others similarly situated. The persons in the class are so numerous that joinder of all members is impractical. There are questions of law and fact common to the class; the claims of the representative parties are typical of the claim of the class; the representative parties will fairly and adequately protect the interest of the class. Defendants have acted on grounds generally applicable to the class.

3

~~Draft -- SAL:dl -- 11/14/68 --~~ IV

1. Plaintiff LOUISE LOWMAN, receives Aid to Families with Dependent Children for herself, her two children and her five grandchildren.

2. She resides with her children and granchildren, her husband, who receives Aid to the Permanently and Totally disabled, and another daughter and two additional grandchildren at 628 Cleveland Street, Brooklyn, New York.

3. Those for whom she receives aid, in addition to herself, are: her children Phillip, Jr., age 13 and Cleveland, age 7, and her grandchildren Frederick Sanders, age 10; Arthur Wine, age 5; Evelyn Wine, age 3; Phillip Wine, age 2; and Victoria Wine, age 1.

4. The family presently receives a bi-monthly grant of $240, including the cost of rent, for herself and these seven children. She has been informed that as of December 1, 1968, her bi-monthly grant will be lowered to $223. Prior to the institution of the "cost of living" increase, the family received $153 bi-montly, which sum did not include the cost of rent. The monthly cost of rent is $195, which cost~~s~~ ~~of rent. The monthly~~ is shared by her husband and her adult daughter.

5. Her family needs two beds, one for herself and another for a child, who currently must sleep on the floor. The family also needs blankets. They have one thin blanket for an adult and seven children. Mrs. Lowman and six of her children presently sleep with nothing but sheets to cover them.

6. The family also needs a kitchen table and chairs. At present, they do not have these items and are unable to sit down to a meal. The children consequently must eat while standing up or sitting on the floor.

7. The five grandchildren need winter coats, boots, and other clothing. They do not have these things and therefore cannot leave the house during cold weather.

8. Money for all of these items is available as special grants under the New York law which would be applicable but for the "demonstration project" challenged in this action. Under the special grant system the family would receive over $330.00 for the needed beds, blankets, table and chairs, and coats and galoshes for five children. The family has never been supplied with these basic items or the money to buy them. The regular grant, the quarterly flat grant of $25 per person is wholly insufficient to feed this family and purchase needed replacements of clothing and furniture and there is no money to buy these and other basic necessities.

(5)

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1. Plaintiff ELEANOR PHILLIPS/ has received Aid to Families with Dependent Children for herself and her two children/ since about October 1967.

2. She resides with her children at 20~~0~~3 West 144th Street, Apt. 23, New York, New York.

3. She has two children, a boy aged 4 and a girl ages 6. Her regular bi-monthly grant is presently $96.00. Before October 1st when the Defendant Department of Social Services instituted a "cost of living" adjustment, she received $92.00 bi-monthly. The family pays $61.20 a month for rent.

4. The family needs many major items of clothing and furniture which she is unable to purchase with recurring grant of ~~$~~ $110.80 a month, exclusive of rent and the additional flat grant of $25 per person per quarter. Both she and her children sleep on beds that are broken and inadequate. Her two children -- a boy and a girl -- must share a bed. They do not have decent sheets or blankets. They do not have a kitchen table or chairs.

5. During the summer of 1968, Mrs. Phillips made application ~~for~~ of the Defendant Department of Social Services for many major items of immediate need. An individualized investigation of her home was conducted by an employee of the Defendant Department of Social Services. It was determined that she needed, by the Defendants' own standards, five hundred and fifty-seven dollars and

ten cents ($557.10) to purchase furniture. On or about August, 1967, she received a letter informing her that a grant for special furniture needs in that amount had been approved. She was instructed to come to Dykman Welfare Center on September 4, 1968, to receive the check. She talked with the employees at that Center on September 4th and appeared there on September 5th. She was informed on both dates that her check had been misplaced and would be forthcoming. She has now been informed that because of the new Simplified Payment Plan she would not receive the check that was authorized for her.

6. Among the items of furniture which the Defendant Department of Social Services had determined she and her children's need, and which were to be purchased from the approved special grant of %557.10, were: a dinette set and four chairs ($27); ~~$~~ a single bed ($33); a double bed ($35); a sofa bed ($30); a chest of drawers ($20); four blankets ($7.50 each, $30); six sheets ($13); six towels ($6); and many other items of a similarly basic nature.

7. The Community Council of Greater New York has published prices as of October, 1967, for the listed items, based on the actual cost of merchandise of medium quality in the lower price lines available, to the selective shopper, at Sears Roebuck and Co., Montgomery Ward, Grant's, Woolworth's and other comparable retail outlets. The actual costs of the items which Plaintiff

Phillips' needs, according to this survey, are: a dinette set and four chairs ($44.95); a double bed ($157.80); a sofa bed and chair ($194.90); a chest of drawers ($77.95); four wool blankets ($56); six sheets ($13.74); six towels ($6).

8. The sum of $557.10 which was authorized by the Defendant Department of Social Services prior to September 1, 1968, to purchase items of furniture which Defendants had determined that the family needed was wholly inadequate to purchase said items. The lesser amount of seventy-five dollars which she has received under the Simplified Payment Plan is still more inadequate and must also be used to purchase replacements of items of furniture and clothing which have become outgrown or unusable as well as to purchase those basic necessities which this family has never had.

8

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VI

1. Plaintiff SOPHIA ABROM has received Aid to Families with Dependent Children for herself and her five children since 1966.

2. She resides at 486 Van Siclin Avenue, Brooklyn, New York.

3. She has five children: Debra Ann, age 13; Lolia, age 9; Jerry, age 7; Billy Joe, age 5; and Steve, age 4 [?]. She is also expecting another child.

4. She now received $149 bi-monthly for herself and her five children. Prior to the "cost of living" increase she received $118 bi-monthly.

5. The building in which Mrs. Abrom and her family live is in a dilapidated, unsafe and illegal condition. Because of the numerous violations of the Housing Code existing in the building, the Defendant Department of Social Services has refused to pay the rent to the landlord, as ~~they are~~ it is authorized to do under *Social Services Law, §143*-b. In retaliation, on or about November 4, the landlord or his agents stopped supplying heat to the building. In addition to the lack of heat, Mrs. Abrom does not have blankets to cover herself and her children. On or about November 8, 1968, an employee of the Defendant Department of Social Services informed Mrs. Abrom that she would have been entitled to money for six blankets under the prior system of special grants, but that under the Simplified Payment System nothing could be done for her.

6. In addition to blankets to warm her children in a house without heat, she needs the following items which she would have been able to receive under the prior system of special grants: winter coats for herself and two of the children; beds for two children; cabinets for dishes and linen~~s~~; dressers and many other similarly necessary items. ~~She now receives~~

(10)

VII

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1. Plaintiff MARTHA BURRELL has received Aid to Families with Dependent Children for herself and her nine children since about May 1967.

2. She resides at 542 West 159th Street, New York, New York.

3. She has nine children: Beverly, age 14; Irma Jean, age 13; Sheldon, age 12; Cynthia, age 11, Omegia, age 9; Tina, age 7; Steven Earl, age 5; Angelos, age 4; and Dorothy, age 2. Her regular monthly grant is presently $239. Before October 1, when the Defendant Department of Social Social Services instituted a "cost of living" adjustment, her grant was $231.75. The family pays $78 per month for rent.

4. The Plaintiff and three of her children presently sleep on the floor. They have no beds. None of the children have adequate sheets or blankets. None of the children have winter coats. The children all need shoes.

5. On or about April 1968, the family's possessions were destroyed in a fire. On or about May 1968, the Department of Social Services gave her about $100 to establish a new home. During the summer of 1968, the Defendant Department supplied her with another special grant of $500 with which she purchased a washing machine and bunk beds for six of her nine children.

6. On information and belief, the Defendant Department of Social Services has refused to supply money to purchase the beds, coats and other items which the Plaintiff needs on the grounds that the special grant has been abolished and the "statute of limitations" has run on ~~to~~ the claims for items destroyed by fire.

7. The regular grant and the quarterly grant of $25 per person for replacements are totally inadequate to meet the family's day-to-day needs and it is impossible to purchase the additional major items of beds, sheets, blankets, coats and shoes from the funds supplied.

draft -- SAL:dl -- 11/14/68 VIII

1. Plaintiff PHYLLIS LOWMAN receives Aid to Families with Dependent Children for herself and her two children.

2. She ~~x~~ resides with her children, for whom she receives aid, and her mother and father, brothers, nieces and nephews who also receive public assistance on separate budgets, at 628 Cleveland Street, Brooklyn, New York.

3. The persons ~~w~~ for whom she receives aid, in addition to herself are her son Willie, age 3, and her daughter Marie, age 1. She is expecting another child in December.

4. The family lives in one room of her mother's house. They presently receive $92 bi-monthly, which includes $30 for the cost of their share of the rent. Prior to the institution of the "cost of living" increase the family received $57 bi-monthly, which did not include the cost of ~~r~~ rent. She has been notified that, as of December 1, 1968, the regular grant will be reduced to $90 bi-monthly. Her doctor has requested that $6 be added to her regular grant to enable her to purchase a special diet which has proscribed for her. The Defendant Department of Social Services has refused to add this amount to her budget.

5. She needs a bed for her son who presently must share a bed with his mother. Her children have no winter coats or boots and they need these and other items of clothing. She has only one dress for herself and feels that this ~~xx~~ is insufficient. Money for all of

these items was available under the prior system of special grants. New York statutes and regulations still require that individuals be provided with these items. Plaintiff PHYLLIS LOWMAN is unable to purchase these things from the amounts supplied in her regular grant and the quarterly flat grant ~~and th~~.

IX

DEFENDANTS

1. The Defendants are New York State and City agencies and person employed therein with primary responsibility under state and federal law for the administration and distribution of public assistance in the City of New York and the federal official who purported to give authorization and sanction to the Simplified Payment System challenged herein.

2. The Defendant State Department of Social Services, under Social Services Law § 5, 6, and 17 has primary responsibility for promulgating regulations and instituting proceedures for the administration of public assistance in New York State, in accordance with the requirements of the Social Security Act, 42 U.S.C. § 301 et seq., the Social Services Law of New York, and the Constitutions of New York and the United States.

3. Defendant George K. Wyman, as Commissioner of the Department of Social Services of the State of New York, has primary responsibility for the administration of that Department in compliance with the law. Social Services Law, §11.

4. Defendant George W. Chesboro, as Acting Commissioner of the Department of Social Services of the State of New York, has in the absence of the Commissioner, primary responsibility for the administration of that Department and its compliance with the law. Defendant Chesboro signed and authorized the proposal

requesting the Simplified Payment System.

4. The Defendant City Department of Social Services has, under Social Services Law, §§ 56, 62, 76, primary responsibility for the administration of program of public assistance to supply eligible residents of New York City with the grants and assistance to which they are by law entitled. It was at the instigation of the Defendant City Department of Social Services that the Simplified Payment System was proposed and instituted. Defendant City Department has promogated informational and policy statements purporting to implement this program challenged herein.

5. Defendant Jack R. Goldberg, as Commissioner of the Department of Social Services of the City of New York, has primary responsibility for the administration of that Department and its compliance with the law. Social Services Law, § 77.

6. Defendant James C. Callison, as Regional Commissioner of the United States Department of Health, Education and Welfare has primary responsibility for the supervision of public assistance programs receiving federal funds under the Social Security Act, in Region II, which includes New York State. Defendant Callison's authority is derived from the Secretary of Health, Education and Welfare. 42 U.S.C. § § 902,903. Defendant Callison approved the demonstration project challenged herein.

X

STATEMENT OF CLAIM

1. Pursuant to the Social Security Act of 1935, New York cooperates with the Federal Government in extending public assistance to needy persons. This legislation authorizes New York State and the federal government to extend aid to the aged (APA), the blind (AB), the permanently and totally disabled (AFD), and families with dependent children (ADC). In fulfillment of its obligations under federal legislation, the State of New York has implemented a plan for the provision of assistance to eligible needy persons.

2. Pursuant to this plan, Defendant Department of Social Services issues to eligible individuals and families a semi-monthly check for food, rent and other items of basic subsistence. Social Services Law §20, 34, 18 NYCRR 352.4.

3. Recognizing that the regular and semi-monthly check does not and cannot cover all basic needs of families and individuals, New York law provides on a statewide basis for the issuance of special grants on an irregular basis for the purpose of buying particular items of need, such as home furniture, kitchen supplies, school clothing and the like. Prior to September 1, 1968, the Defendant New York City Department of Social Services, pursuant to Social Serives Law § 20 and § 34 and 18 NYCRR 352.5, issued financial grants for these certain "special" or non-recurring" needs based on individual client request and individual caseworker verification. This provision for special grants recognized that individuals came to public assistance with varying needs in terms of major and essential items of clothing and furniture and that individuals, including children, continued to have varying needs for such items which were not met by the basic recurring subsistence grant. Accordingly, it required that special needs grants be given from time to time to meed a basic minimal level for these persons. The recurring welfare grant does not cover these major items and could not equitably do so since the regular grant is for a fixed and very limited amount, which individual needs for these major special items vary. One application of these provisions, styled minimum standards, was to bring families and individuals up to that standard by the issuance of a special grant of money for furniture and clothing deemed essential at the time a family began receiving public assistnace. Another application was to replace items of furniture, and clothing as these became worn out, unsafe or a hazard to health. Caseworkers were charged with the responsibility of ascertaining family and individual need for these items during their periodic 3 month or 6 month home visit. Even under this system of special grants, the amounts given were substantially less than the actual cost of the items which the recipient was supposed to purchase with the money. See Exhibit 1.

4. In order to make those person in need within the City of New York aware of the right to obtain special grants to meet some

of their basic minimum needs, the plaintiffs and others have organized themselves into the City-Wide Coordinating Committee of Welfare Groups. As a result of such organization and the increased exercise by plaintiffs and other members of their class of the rights guaranteed by the First Amentment, the amount of special grants and the numbers of needy persons receiving such grants has increased. The desired objective of this activity has been to alleviate to some degree the subsistence poverty existence of those persons and families receiving public assistance.

5. While the aforementioned activity has been taking place and although the statute and regulations have remained unchanged, the special grants for major items of clothing and furniture have been arbitrarily eliminated for persons and families residing in New York City. In lieu thereof, the Simplified Payment System has been instituted for the City of New York based on a United States Department of Health, Education and Welfare demonstration grant authorized August 15, 1968 by James Callison, Regional Director, the relevant portions of which are attached hereto as Exhibit 2. The Federal demonstration grant was based allegedly upon 42 U.S.C. §1315 and implemented by City of New York Department of Social Services Procedure No. 6842, attached hereto as Exhibit 3. Under this Simplified Plan a "flat grant" of $25 per quarter is to be paid to each client as a substitute for the prior non-recurring grants for special individual needs for home furnishings and clothin

6. Under either the old or new system the amounts supplied are totally inadequate to meet the minimal needs of those individuals and families dependent ~~on~~ upon public assistance. In ~~July~~ June, 1968, under the special grant system, a typical family of four (a mother and three children) received $3,050.60, exclusive of rent. Now this family receives $2,824, per year, exclusive of rent. The grants for items of special needs of furnature and clothing to this family were typically $772 per year (prior to the abolition of the special grant) and are now only $400 per year. The total amount of assistance supplied is

efully inadequate. Numerous budgetary studies attest to the fact that $3,778 is needed at a bare minimum, exclcusive of rent, to sustain such a family. Thus the demonstration project challeneged herein is not a minor alteration in administrative procedures but rather repr esents a drastic reduction in the amount supplied for sustenance which were already so inadequate as to place the health safety and well-being of those children and mothers forced to depend on these grants in an exceedingly precarious position.

XI

As a first cause of action plaintiffs allege

1. While indigent citizens of New York State living outside of New York City are presently able to receive grants for items of special need for furniture and clothing based on individual client request and individual caseworker verification, public assistance recipients in New York City may not receive grants for items of such special need for clothing and furniture and the $25 per quarter cyclical grant given to New York City residents in place of the special grants is substantially less than the amount of money normally supplied under the prior system and is totally inadequate to purchase the items which New York has determined are necessary to live at a minimal standard of decency.

2. This substantially different treatment of the needs for major items of clothing and furniture of persons living in New York City and those living in other parts of New York State is an invidious discrimination based solely on a factor of residency and totally unrelated to individual need. This discrimination deprives plaintiffs and others similarly situated of the equal protection of the laws guaranteed by the Fourteenth Amendment.

3. The invidious and unjustifiable nature of a discriminatory scheme which would supply residents of New York City with substantially lesser amounts to meet their needs for furniture and clothing than is supplied to residents in other areas of the State, is compounded by the fact (which Defendant's [illegible] have acknowledged) that the cost of these needed items is actually greater for individuals who live in New York City in that it costs more to live in New York City and Duchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester counties than it does in

XII

As a Second cause of action, plaintiffs allege:

1. The Simplified Payment System violates the Social Security Act and the regulations made pursuant to it because it is not a plan of uniform state-wide application in the public assistance recipients in New York City are singled out for special, disfavorable and discriminatory treatment.

2. Sections 2(a)(1), 402(a)(1), 1202(a)(1), 1402(a)(1), 1602(a)(1), of the Social Security Act, 42 U.S.C. §§302(a)(1), 602(a)(1), 1202(a)(1), 1352(a)(1), 1383(a)(1), require that a state plan for categorical assistance benefits must "provide that it shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them;. . ." As interpreted by the Department of Health, Education and Welfare in its "Handbook on Public Assistance Administration," the statute requires that the plan "shall be in operation, through local offices, on a State-wide basis and provide for administration in accordance with standards that are mandatory and equitable throughout the State." Pt. II § 4200(1) (1964).

> "The purpose of the requirements relating to State wide operation is to assure that the public assistance programs in which there is Federal financial participation, be in effect throughout the State;...that the benefits of the programs will equally be available to all eligibile persons; and that State policies, standards and methods will apply equally to persons in like situations wherever they may live." Pt. II §4300 (1964).

3. The Simplified Sayment System clearly conflicts with the requirement that "policies, standards, and methods. . .apply equally to persons in like situations wherever they may live", since New York City residents are treated differently from residents of other parts of New York State in material respects in that payments are made at a flat rate instead of in accordance with individual need, and, the average level of payment in New York City has been significantly lowered, even though it costs significantly more to live in New York City than it does in other areas of the State. As a result thereof, invidious discrimination has been imposed upon the plaintiffs and members of their class to their detriment and damage in violation of the controlling statute and rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

XIII

As a THIRD cause of action, the plaintiffs incorporate and reallege as if fully set forth herein the allegations set forthe in Part, XI and XII of the complaint, and further allege:

1. The defendants have attempted to justify the Simplified Payment Plan with its selective and discriminatory treatment of the indigent citizens of the City of New York by claiming that the plan is a demonstration project under Section 1115 of the Social Security Act, 42 U.S.C. §1315. On information and belief, the New York Department of Social Services, on August 15, 1968, applied for a waiver of the requirement of state-wideness under Section 1115. On the following day, August 16th, purported approval was given by letter of Regional Commissioner James Callison. Application and approval of demonstration project attached hereto as Exhibit 2.

2. The attempted waiver of the state-wide uniformity required by statute is invalid and the discriminatory treatment authorized thereby violates the Constitutional guarantee of Equal Protection because, on information and belief, the purpose and effect of this purported demonstration project was to unconstitutionally and invidiously penalize the plaintiffs and the class they represent for exercising their First Amendment rights to organize themselves and others; for disseminating information about individual rights under public assistance programs; and for petitioning the defendants for grants for the items of need which the New York statute and regulations have established as necessary to meet a minimal level of decency. All of the aforementioned acts of the plaintiffs and their class are protected by the First and Fourteenth Amendments to the United States Constitution, the exercise of which can not be punished by the action of the government or any of its agencies or subdivisions.

5. Under the leadership of the City-Wide Coordinating Committee of Welfare Groups organized by plaintiffs and other members of their class in early 1966, thousands of welfare recipients

were informed of their legal rights and given for the first time the knowledge, impetus and encouragement to assert these rights. One of the explicit purposes and necessary effects of the organizational and educational effort undertaken by plaintiffs and their City-Wide Committee was to enable an increasing number of people to obtain the items of essential living need which the New York law guaranteed them and to combat administrative practices aimed at nullifying the special grant provisions. As hereinafter set forth, as a result of the exercise of the aforementioned First Amendment rights by plaintiffs, members of their class, the level of special grants for clothing and furniture increased from an average of ~~$40~~ $25 per person per year in 1965 to a projected average of nearly $200 per person per year ~~in 1966~~ by the summer of 1968, and there has been a corresponding increase in the number of applications for special assistance and in the proportion of acceptance of those who have applied.

6. On information and belief, one of the primary reasons for the extreme haste in seeking and obtaining approval for the Simplified Payment Plan which was granted one day after filing of application, was, on information and belife, to circumvent a planned effort by recipients of public assistance coordinated by plaintiffs and City-Wide Committee to obtain minimal items of school clothing for the children of those on public assistance so as to enable such children to ~~physically~~ attend school.

7. The use of the device of a "demonstration project" to impose the Flat Grant Plan upon those receiving public assistance in the City of New York is to make manifest to the plaintiffs and their class that even the rudimentary State guarantee of bare minimal standards of decency will be withdrawn if those on public assistance attempt to exercise their First Amendment rights or organize for the purpose of protecting and guaranteeing their rights. The

establishment of a program for such punitive purpose is not a valid demonstration project but is an unconstitutional means of punishing persons for the exercise of protected First Amendment rights.

XIV

As a FOURTH cause of action, plaintiffs incorporate and reallege as if fully set forth herein the allegations set forth in Parts XI and XII and further allege:

1. The Simplified Payment Plan is not a valid demonstration project and denies Equal Protection of the law because its principal effect of lowering the amount of the grant which individuals may receive to meet their needs for clothing and furniture is contrary to the enabling legislation for demonstration projects, and the Regulations promulgated thereunder,

2. The Federal Regulations provide that the basic purpose

of a demonstration project is "to develop and improve the methods and techniques of administering assistance and related services." Handbook, Pt. IV, § 8431. The Federal Regulations do not permit or authorize a demonstration project to be utilized to lower the levels of assistance available for a particular class of individuals or of families. The Federal Regulations permit and authorize a demonstration project to increase the level of assistance for a particular group of people; to meet needs not otherwise met by public assistance; and to test changes in administration procedures which do not change the level of the grant available but simply effect the manner in which the grant is given. See Exhibit 4 attached hereto for examples of demonstration projects.

3. In enacting the legislation Congress did not intend to allow, and in implementing the legislation the Department of Health Education and Welfare has never previously allowed, a demonstration project to be used as a vehicle for lowering the level of assistance to a particular group within a state.

4. Defendants acknowledge that in order for the Simplified Payment System "to be a genuine demonstration that the cyclical recurring grant must be expected to meet the overwhelming majority of what the agency has traditionally defined as 'special' needs." (Exhibit 2 attached hereto). Insert 8B-A

5. ~~If special grants were permitted to continue and be granted at the rate existing at the time the proposal for the Simplified Grant System demonstration project was approved, the figure of one hundred dollars per person per year mandated by the Simplified Grant System constitutes a drastic reduction in the~~ amounts available for items of special needs. Furthermore, the imposition of the flat grant system constitutes a reversal of the trend of increases in the amount and rate of distribution of special grants which would be expected to continue to increase consistent with the growth in the number of persons being organized and informed of their rights under New York Law, and with the coming of the fall

25-A

Insert

At the time the flat grant demonstration was proposed and approved, special grants were being supplied at a rate substantially higher than $100 per person, per year. In July, 1968, special grant were given at a rate of $180 per person, per year; in June the rate was $193 per person, per year; in May, $150 per person per year. See exhibit 5 attached hereto The figure of $100 per person per year supplied under the Simplified Payment System represents a drastic reduction in the onths in which money is needed to buy children the minimal items clothing they need to attend school and to survive the weather of e winter months with grants for warm clothing which were previously de under the special needs system.

XV

As a FIFTH cause of action, plaintiffs incorporate and allege as if fully set forth herein the allegations set forth in rts XIII and XIV, and further allege:

1. The purported waiver of the requirements of the New rk state plan and the Social Security Act is invalid because tained through the defendants' fraudulent misrepresentation of the ope and effect of the proposed demonstration project.

2. Defendants Chesboro and Goldberg in their proposal r a Simplified Payment System (Exhibit 2) failed to explain that e principal effect of the System would be to lower the grants of w York City recipients and further failed to specify the amounts the grants for special needs which were given under the then isting special grant system or to compare those amounts with the oposed figure of $100 per year.

3. In characterizing the proposed change as simply "an novation in the administrative machinery and procedure for pro-ssing special grants," the Defendants misrepresented the effect their proposed action, although by their own reports and records e defendants knew or reasonably should have known that the actual fect of the Simplified Payment System would be to lower the pay-nts for typical clothing and furniture from $150 - $170 or more r person per year to one hundred dollars per person per year. Insert 26A

4. The defendant officials of state and city agencies ave further misled and deceived the defendant Regional Commissioner Health Education and Welfare by utilizing the limited approval of e change embodied in the demonstration approval for applying,

Insert 26-A

Defendants (state & city officials) further misrepresent the facts and decieved Defendant Callison by affirming that the Simpfied Payment System represents no "increase in the level of assistance payment", while in fact the ~~change~~ proposed change represented a substantial decrease in assistance available.

enforcing, executing and implementing other related changes in the law not authorized in the demonstration, all to the great loss, damage and detriment of the plaintiffs and the class they represent, including but not limited to the abolition or waiver of the provisions of New York law which specify the items which comprise the "minimum standards" necessary for a minimum standard of decency. New York law presently requires that special needs for the cost of furnature and household supplies "*shall* be met for the *initial provision*, *replacement* or *repair* of essential items." 18 NYCRR § 352.5(j). The authorization for the Simplified Payment System provides that the flat grant of one hundred dollars per year may only be utilized legally to make *replacement* of items which the individual or family was initially provided and which have subsequently become unusable or unfit for their purpose and further requires the replacement of items detroyed by fire or other disaster. The New York Department of Social Services has proceeded to use this limited authorization as grounds for refusing to supply - on the basis of individual application and individual determination of need - the items which are needed initially to bring an individual or family up to the minimal level.

5. On information and belief, the uniform practice of the defendant Department of Social Services since September 1, 1968 has been to refuse to issue grants to initially supply items to bring up to minimal standards individuals who have recently applied for public assistace or who for other reasons have never been initially supplied with the items required by New York law. The defendant Department of Social Services has refused to supply moneys for minimal standards on the alleged ground that the Simplified Payment System no longer permits such grants. The defendant State Department of Social Services has affirmed and condoned this action. See Statement of Defendant Goldberg, Exhibit 5, and decision of State Department of Social Services, Exhibit 6, attached hereto.

6. The deception in the proposal and the consequent approval of a demonstration predicated on a fraudulent statement of existing

invalid and without effect. The Simplified Payment System as proposed and approved does not authorize the abolition of the specification of minimum standards. It does not authorize the defendant Department of Social Services to refuse to initially bring destitute individuals and families up to this standard.

XVI

As a SIXTH cause of action, plaintiffs incorporate and reallege as if fully set forth herein the allegations set forth in Part XII and further allege:

1. The purported waiver of state plan requirements is invalid because the Defendant Callison, Regional Director of the Department of Health, Education and Welfare, lacked authority under the federal statute and regulations to grant such a waiver or to approve the demonstration.

2. The applicable provision of the Social Security Act set forth at 42 U.S.C. 1315 and the Regulations set forth in Handbook Pt. IV, § 8433 provide that the Secretary of the Department of Health, Education and Welfare may waive compliance with the relevant sections of the Act.

3. In approving the demonstration project Defendant Callison does not purport to act upon any authority except his own.

4. The Secretary of Health Education and Welfare could not validly delegate to the Regional Commissioner of Health, Education and Welfare the power to waive the requirements of the Social Security Act or the duly approved State plans. Insert 28-A

XVII

As a SEVENTH cause of action, plaintiffs incorporate and reallege as if fully set forth herein the allegations set forth in Part XII and Part ~~II~~ XIV and further allege:

1. The purported demonstration project is invalid because it was authorized without compliance with the regulatory procedures required and the uniform prior practice for examination of the significance, practicality and effectiveness of the program to "help needy persons to attain self-support or self-care and strengthen family life."

2. The Regulations of the Department of Health, Education and Welfare set forth at Handbook of Public Assistance, Pt. IV, § 8436, mandate that extensive consideration be given to the ramifications and impact of a proposed demonstration project.

3. On information and belief, the demonstration project

a decision to waive the requirements of the Social Security Act and the New York Statute and Regulations which result in a substantial lowering of the amounts available to the 80% of N.Y.'s public assistance recipients who reside in New York City is neither routine or ministerial but represents a major change in the law.

requested by New York was not subjected to this required consideration, and, in fact, was submitted one day and approved on the next day. The demonstration project proposal itself sets out the sketchiest description of the goals of the Plan, the methods to be utilized and the means by which the demonstration is to be evaluated. This bare outline of a plan does not meet the requirements of the federal law and regulations that the application "include a precise description of goals, innovative methods or approaches, ... criteria used (in evaluation), the result to be achieved and any major problems anticipated," and that the plan "clearly outline the methods to be used for evaluating the goals ... contained in the application."

4. The failure of Defendant Callison to comply with the requirements of the Federal Regulations and to comport with the uniform prior practices for examination of proposed demonstrations resulted in the approval of a proposal premised on a gross misrepresentation of existing conditions and of the effect of the demonstration.

XVIII

As a ~~THIRD~~ Eighth cause of action, plaintiffs incorporate and realleges as if fully set forth herein the allegations set forth in Part XII and further allege:

1. The purported authorization of the Simplified Payment Plan was ineffective because required changes in state law were not first obtained. The Federal Regulations require that "when waiver of a plan requirement...(is) requested under section 1115, the State agency must: ... (2) Give assurances of its legal authority to conduct the project." Handbook of Public Assistance, Pt. IV §8420.

2. These requirements were not met prior to the application for the institution of the Simplified Payment System.

3. Upon information and belief, in June 1968 the defen-
s made plans to institute a state-wide flat grant program
to eliminate grants for special needs through administrative
ges. (New York Times, June 26, p. 27; June 27, p. 31.);
after announcement of the plan, considerable opposition de-
ped. Subsequently, at a hearing in executive session before
New York Joint Legislative Committee to revise the Social
are Laws, State Budget Director, T. Norman Hurd informed the
ndants that their proposal could not be instituted without
slative approval. (N. Y. Times, July 4, 1968, p. 29.)
er than seeking the required legislative change, the Defendants circumvented
sting New York law as it applies to 80% of the recipients
public assistance in New York state by requesting a special
[illegible] demonstration project.

4. Funds of the State of New York provided for under the
l needs regulations can not be used for the flat grant project
ch use was not contemplated by the Legislature in enacting
ecial needs legislation and therefore such use is contrary to
York law.

XIX

As an Ninth cause of action, plaintiffs incorporate and
lege as if fully set forth herein the allegations set forth in
XII and Part XVI and further allege:

1. On information and belief, the Simplified Payment Plan
n invalid demonstration project and denies Plaintiffs Equal Protection of the law because the figure of one
red dollars per person per year was arrived at in an arbitrary
er, wholly unrelated to the amounts that recipients of public
stance were able to receive under the prior law or to the reason-
costs of the items which prior state and federal law have
rmined are necessary to maintain a minimal level of decency,
which the Plaintiffs are expected to purchase with this grant.

2. On information and belief, the figure of $100 per
was not arrived at through an examination of the amounts
timately requested and given in the recent past and a projection
stimated need for the future, or an analysis of the cost of
ssary items by the Homemakers and other experts employed by the
ndant Department of Social Services, or a reasonable estimate
ublic funds available for these items.

3. By reason of the fact that the one hundred dollar
re upon which the proposed demonstration was predicated was
ved at in an arbitrary and capricious manner wholly unrelated
ypical or particular individual needs or to the cost of necessary
s, the purported demonstration is invalid.

~~XX~~

As a TENTH cause of action, plaintiffs incorporate
allegations of part XIII, XIV and XV and further
llege:

1. The application for the Simplified Payment System
onstration project was made on August 14, 1968 and approval
given on August 15, 1968. Information as to this application
approval was not made public until August 26, 1968. (N.Y.
s, Aug. 27, 1968, p. 1.) The Simplified Payment System took
ct on September 1, 1968.

2. At the time the plan took effect there were many welfare recipients who had recently been supplied with the money to purchase the items which comprise the standard required for a minimal level of decency and such people received cyclical grants to purchase replacement items. There were many hundreds of thousand more recipients of public assistance, such as Plaintiffs Abrom and Louise Lowman, who lacked these minimal items and who had not yet asserted their right to receive -- upon request and verification -- the grants to purchase such basic necessities as beds, blankets, coats, a kitchen table and chairs. Still others, such as Plaintiff Burrell,had made application prior to September first for items such as beds, sheets, blankets, coats and shoes had had not had their needs verified. Yet others, such as Plaintiff Phillips had made applicantion and had had their needs verified but had not been issued checks by September first -- sometimes because of normal administrative delay and in other cases because of Departmental error.

3. The institution of the Simplified Payment System on September first, under the State and City officials interpretation denying those special grants which had been requested or verified before that date, and denying grants to initially bring each person up to the level of minimum standards before requiring them to

provide for replacements out of the cyclical grant drew an invidious line creating two classes of recipients of public assistance One class of those who had been brought up to the minimum standard on September first are able to use their cyclical grant to purchase replacements of major items. The other class must use this wholly inadequate sum to provide for the initial purchase of these major items and to buy needed replacements.

4. This discrimination based on the individual's circumstances on the arbitrarily selected date of September first is totally unjustified and denies that plaintiffs and the class who they represent the equal protection of the law guaranteed to them by the Fourteenth Amendment of the Constitution.

XXI

As an ELEVENTH cause of action, plaintiffs incorporate and reallege as if fully set forth herein the allegations set forth in Part XIV and further allege:

1. The institution of the Simplified Payment System violates the requirement of 42 U.S.C. 402(a)(23) (1967) which provides that "by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living cost since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

2. By virtue of this provision, enacted 2 January 1968, the States are currently under an obligation to begin making changes in the levels of the grants supplied to recipients of categorical assistance to reflect changes in the cost of living.

3. Levels of assistance in New York State effective at time of enactment of this Congressional mandate were set forth epartmental regulations issued September 30 and April 30, 1967 have been supplement~~s~~ed once by a six percent increase in the c welfare grant effective October 1, 1967.

4. The cost of living in New York State rose 4.6% in the od from September 1967 to August 1968..

5. When the amounts previously and currently available tems of special need are added to the basic grant and compared, esult is that ~~by reason [illegible] of the flat grant and the g cost of living~~ New York has in fact substantially and absolutely lowered nount of assistance available to individuals and families in ork. See Exhibit. 7.

Carl Rachlin

1. Jurisdiction.

18 USC 1343

Jurisdiction is conferred on this court by 42 U.S.C. Sec. 1983 which permits civil action in United States District Courts to seek relief from deprivation of rights, privileges and immunities secured by the Constitution and law of the United States under color of state statute, ordinance, regulation, custom of usage (if a State). The rights, privileges and immunities sought herein to be redressed are those secured issued by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and by the Social Security Act, 42 U.S.C. Sec. 601-609 (and 42 U.S.C., Sec. 1315).

2. The amount in conflict is in excess of $10,000.

3. Plaintiffs, , are residents of the City and State of New York. They are welfare clients of the Department of Social Services of the City of New York and are presently receiving funds from said Department including a distribution of monies known as the "cyclical recurring grant." They bring this action on behalf of themselves and on behalf of all those persons similarly situated.

4. (Dependents -- description of process)

5. Prior to September 1, 1968 the New York City Department of Social Services, pursuant to State law (?) issued financial grants for certain "special" or "non-recurring" needs to be based on individual client request

and individual caseworker verification. Beginning on September 1, 1968, through authorization of Wilbur Cohen, Secretary of HEW, acting under 42 U.S.C., Sec. 1315, the N.Y.C.Department of Social Services instituted a "demonstration project" whereby a cyclical recurring grant of $25 to be paid each client each quarter year was substituted for the above mentioned special non-recurring grants.

6. The cyclical recurring grant of $25 per quarter is considerably less than the (average) special non-recurring grant which it superceded and to which the plaintiffs were previously entitled.

7. Plaintiffs allege that the new system, authorized by the Secretary of HEW under 42 U.S.C. Sec. 1315 as a demonstration project is not a bona fide demonstration project.

(a) The "demonstration project" covers the entire City of New York. There is no precedent for a "demonstration project" of this enormity. As a program of this nature increases in size it becomes less and less of an experiment and more and more of a permanent substitute. Experiments are usually conducted on a small scale to test their validity. When one is conducted on a large scale, then the question must arise as to whether ti it is truly an experiment or in reality something else.

(b) A demonstration project authorized by 42 U.S.C., Sec. 1315 may be instituted in order to experiment with administrative techniques (42 U.S.C., Sec. 1310). However, in order to comply with 42 U.S.C., Sec. 1315 the project must, in the judgment of the Secretary of HEW, be likely to assist in promoting the

the objectives of sub-chapters I, IV, X, XIV, and XIX of the Social Security Act in the State involvdd. Plaintiffs allege that since the result of this project is to decrease the amount of per capita funds for certain needs it is inherently impossible for te objectives of the aforementioned sub-chapters to be promoted thereby/since the project cannot assist in promoting these sections of the Social Security Act, the Secretary acted arbitzarily and in abuse of discretion in approving said project. The amount of the cyclical clycical recurring grant was arbitrarily and capriciously fixed by (   ) without any regard for the actual needs of the plaintiffs and other welfare clients. The result was to deprive plaintiffs and others of funds to which they were otherwise entitled without due process of law in contravention of the Fourteenth Amendment to the U.S.Constitution.

(c) By an admission of the New York City Department of Social Services (letter of 8/14/68), the department recognizes "........that for this demonstration project to be 'testable' -- to be a genuine demonstration -- that the cyclical recurring grant must be expected to meet the overwhelming majority of what the agency has traditionally defined as 'special' needs." (emphasis added). Since the grant is considerably smaller than the grants under the prior system (which were thought then to be inadequate) it is inherently impossible for the project to attain the Department's own standards and therefore, in the Department's own words, it is impossible for the project to be a genuine demonstration.

8. Since the project is not a true demonstration for the reasons enumerated above and since the result is to deprive the plaintiffs and others similarly situated of monies to which they would otherwise be entitled, the deprivation is one without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

9. New York State Social Services Law §76 provides that each city public welfare district is responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself. Sec. 131 (1) provides that it shall be the duty of PWO (officials), insofar as funds are available, to provide adequately for those unable to maintain themselves. Sec. 131 (3) states that a principal consideration in determining the adequacy of assistance in each case shall be the page 9 sufficienc thereof for maintenance in accordance with standards of public health in the community with due regard for variation in cost from time to time betwee localities.

10. Plaintiffs allege that in fixing the amount of assistance for certain needs at $100 per year, the Department has made no effort to determine whether this sum is adequate to meet the needs of their clients. Although

the Department admits (letter of 8/14/68) that there is a cost of living differential between New York City and other areas of the State, no effort has been made to recognize this differential in calculating the eky cyclical recurring grant (except to say that if the State should institute a similar program elsewhere the Department would adjust the grant accordingly).

11. The result is that welfare clients in other areas of the State are receiving funds in accordance with their needs while those in New York City, including the Plaintiffs, are having their actual needs ignored. Although the Department recognizes that the cost of living is higher in New York City 1than elsewhere in the State, welfare clients in New York City are receiving less per capita for certain necessities than those outside New York City, in contravention of Sec. 131 of the Social Security Law. The (State Department) and (City Department) are therefore denying the Plaintiffs and others similarly situated equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

12. The cyclical recurring grant of $25 per client per quarter was determined by arbitmary and capricious means. It bears no relationship whatsoever with the actual needs of the Plaintiff and others similarly situated. The Department recognized this fact when it stated (letter of 8/14/68) that one of the objectives of the project was more equitable distribution

(of funds) over the total careload. In short, in an arbitrary and capricious manner the Department is sehking to divide the pie in as many slices as there are clients instead of attempting to determine what the actual needs of their clients were, or, more important, if the grant would meet these needs. The main consideration was not the needs of the people, but a fixed sum of money set aside.

13. There is, however, more money available to meet the special needs of the clients of the New York City Department of Social Service. In its letter of August 14, 1968 the Department states that if the state were to institute a similar program for other areas of the State, the City Department would modify its program in order to account for the differential in cost of living. Thus the amount granted to each client depends neither on the needs of that client not the total amount of funds available. Denial of funds to which Plaintiffs and others are otherwise entitled is therefore totally arbitrary and capricious so as to amount to denial of due process in violation of the Fourteenth Amendment.

[illegible]

O: All Supervisors
Office Manager

M: S. Lewis, Acting Director

: ESTABLISHMENT OF A HOME

In order to establish a home it will be necessary to have the approval of B.P.A. pending the establishment of a flat grant for this purpose.

The following information will be necessary in memo form:

1. Family composition.

2. Eligibility. (Why family is requiring assistance).

3. Reason for moving to unfurnished place.

The above information will be telephoned into Central Office by the Senior Case Supervisor and the allowance to be granted based upon the above, which would include the number of rooms to be furnished, will be given to us by Central Office. Until further notice we will use Code 99 instead of Code 6.

SL:SD

CBS - 51 W 52 St.
ABC - 1330 [illegible]
NBC - 30 Rockefeller Plaza

AP - RG
N. -

November 12, 1968

FOR IMMEDIATE RELEASE

Pierce Lehmbeck
City Editor
Associated Press
50 Rockefeller Plaza
New York, N.Y.

Dear Mr. Lehmbeck:

This suit for damages was filed on November 12, 1968 by Carl Rachlin, Scholarship, Education and Defense Fund for Racial Equality legal director on behalf of Eunice Smith, a Bronx mother of five.

She is suing for personal loss of earnings and cost of household help required because of the strike. Mr. Rachlin believes that thousands of New York City residents have been similarly damaged. This suit may well be a precedent for other parents and guardians.

Sincerely yours,

Marvin Rich
Executive Director

Enclosure: (1)

November 12, 1968

FOR IMMEDIATE RELEASE

City Editor
U.P.I.
220 East 42nd Street
New York, N.Y. 10017

Dear Sir:

This suit for damages was filed on November 12, 1968 by Carl Rachlin, Scholarship, Education and Defense Fund for Racial Equality legal director on behalf of Eunice Smith, a Bronx mother of five. She is suing for personal loss of earnings and cost of household help required because of the strike.

Mr. Rachlin believes that thousands of New York City residents have been similarly damaged. This suit may well be a precedent for other parents and guardians.

Sincerely,

Marvin Rich
Executive Director

Enclosure: (1)

November 12, 1968

FOR IMMEDIATE RELEASE

Devid Holstrom
Christian Science Monitor
588 Fifth Avenue
New York, N.Y.
3rd floor

Dear Mr. Holstrom:

This suit for damages was filed on November 12, 1968 by Carl Rachlin, Scholarship, Education and Defense Fund for Racial Equality legal director on behalf of Eunice Smith, a Bronx mother of five. She is suing for personal loss of earnings and cost of household help required because of the strike.

Mr. Rachlin believes that thousands of New York City residents have been similarly damaged. This suit may well be a precedent for other parents and guardians.

Sincerely,

Marvin Rich
Executive Director

Enclosure: (1)

November 12, 1968i

FOR IMMEDIATE RELEASE

→ City Desk

Bernard Bard
New York Post
75 West Street
New York, N.Y.

Dear Mr. Bard:

This suit for damages was filed on November 12, 1968 by Carl Rachlin, Scholarship, Education and Defense Fund for Racial Equality legal director on behalf of Eunice Smith, a Bronx mother of five. She is suing for personal loss of earnings and cost of household help required because of the strike.

Mr. Rachlin believes that thousands of New York City residents have been similarly damaged. This suit may well be a precedent for other parents and guardians.

Sincerely,

Marvin Rich
Executive Director

Enclosure: (1)

November 12, 1968

FOR IMMEDIATE RELEASE

M. S. Handler
→ City Desk New York Times
229 West 43rd Street
New York, N.Y.

Dear Mr. Handler:

This suit for damages was filed on November 12, 1968 by Carl Rachlin, Scholarship, Education and Defense Fund for Racial Equality legal director on behalf of Eunice Smith, a Bronx mother of five. She is suing for personal loss of earnings and cost of household help required because of the strike.

Mr. Rachlin believes that thousands of New York City residents have been similarly damaged. This suit may well be a precedent for other parents and guardians.

Sincerely,

Marvin Rich
Executive Director

Enclosure: (1)

November 12, 1968

FOR IMMEDIATE RELEASE

Daily News
City Editor
220 East 42nd Street
New York, N.Y.

Dear Sir:

This suit for damages was filed on November 12, 1968 by Carl Rachlin, Scholarship, Education and Defense Fund for Racial Equality legal director on behalf of Eunice Smith, a Bronx mother of five. She is suing for personal loss of earnings and cost of household help required because of the strike.

Mr. Rachlin believes that thousands of New York City residents have been similarly damaged. This suit may well be a precedent for other parents and guardians.

Sincerely,

Marvin Rich
Executive Director

Enclosure: (1)

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

Carl Rachlin

3 October

Dear

Enclosed is a rough draft of the complaint to challenge the flat grant of $100 per year that covers what was formerly known as special needs. Although it requires some beefing up and lacks a "wherefore" clause (which will ask for a permanent injunction), I'd like you to see what has been done and to submit your comments.

Sincerely
Michael Kujilsmith
per Carl Rachlin

Contributions are deductible for income tax purposes

■ *president:* Andrew E. Norman ■ *vice presidents:* William S. Ellis, Nannette Sachs ■ *secretary:* Ezra Levin ■ *treasurer:* Shelley Appleton ■ *executive director:* Marvin Rich ■ *leadership development director:* Ronnie M. Moore ■ *legal director:* Carl Rachlin ■ *BOARD OF DIRECTORS:* Nils R. Douglas, *chairman* ■ James Baldwin ■ Katrina McCormick Barnes ■ Allan Barton ■ Jonathan Bingham ■ Canon James P. Breeden ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S.J. ■ Michael O. Finkelstein ■ Doris Freedman ■ James T. Harris, Jr. ■ Claude Heckscher ■ Norman Hill ■ Arthur Kimmelfield ■ Dr. Archie Lacey ■ Jeremy Larner ■ Joann List Levinson ■ John Lewis ■ Leon Modeste ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Edward Norton ■ Richard J. Schwartz ■ Elaine Slater ■ Rowland Watts

490

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

October 10, 1968

Dear Friend,

As promised, inclosed are the notes that I took on the meeting the other day with regard to the Flat Grant.

Your prompt comments on inaccuracies would be most appreciated.

Cordially yours,

Carl Rachlin

Carl Rachlin
Legal Director

CR:jb
Inc.

cc: Mr. John Chipman Gray
Mr. Hulbert James
Mr. Edward Sparer
Mr. Lee Albert
Mr. David Gilman
Miss Mary Kaufman
Mr. Mike Kupersmith

Contributions are deductible for income tax purposes

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490

LUBELL AND LUBELL
ATTORNEYS AT LAW

DAVID G. LUBELL
JONATHAN W. LUBELL
STEPHEN L. FINE *
WILLIAM H. SCHAAP
COUNSEL
CLARENCE B. JONES
* CONNECTICUT BAR ONLY

103 PARK AVENUE
NEW YORK, N.Y. 10017
AREA CODE 212
889-5290
CABLE: LUBELLEG

October 29, 1968

Carl Rachlin, Esq.
164 Madison Avenue
New York, New York

Re: Welfare Complaint

Dear Mr. Rachlin:

Enclosed is a revised draft of the proposed complaint in the Welfare workers situation. I have undertaken to make this revision upon request by the National Lawyers Guild. I still feel that the complaint is too diffuse and loses some of its impact by its multiple causes of action. However, the central issue of the use of the flat grant system to punish the Welfare workers for their organizing and exercising their constitutional rights has now been given greater emphasis.

I have not attempted to draft the prayer for relief. However, after you and others of the Committee have had an opportunity to examine the revised complaint I would suggest that we all sit down and hammer out a final complaint with appropriate prayers for relief. In this regard it would be appropriate to request a temporary restraining order and an order for convening of a special three-judge court since the jurisdictional requirements for such a panel are met by the allegations of the complaint. Thank you.

Very truly yours,

LUBELL AND LUBELL

David G. Lubell

David G. Lubell

DGL:jam
Enclosure

CC: Mary Kaufman, Esq. w/enc.

Dear Carl Rachlin:

Enclosed is your receipt for the costs which you paid in *Lowman v Dept. of Social Services* and my check for the change I received, since I do not want to send the change through the mail.

Sylvia Law

New York City Department of Social Services
August 14, 1968

1115 Proposal for Simplified Payment System

The New York City Department of Social Services, in this proposal under Section 1115 of the Social Security Act, is proposing an innovation in the administrative machinery and procedures for special grants, an innovation which we believe can form the basis of a new approach to the administration of public assistance.

The Department is proposing a waiver of those provisions of the New York State Plan which require that the issuance of financial grants for certain "special" or "non-recurring" needs be based on individual client request and individual caseworker "verification". In effect, this has meant a wide range of discretion in decision-making by staff. We are proposing to substitute a cyclical series of centrally authorized grants which will be expected to meet the preponderance of what have traditionally been defined as "special" needs for clothing and household replacements. The payments would be based on family size at the level of $100 per person per year.

The income levels for determining eligibility for assistance would be identical with the current levels.

We are proposing to implement the first full cyclical payments effective eptember 1. The cyclical payments will be made on September 1, December 1, April 1 nd July 1.

Rationale

Through this 1115 project, the Department expects to demonstrate that a cyclical series of automatic centrally authorized grants will:

1. Result in a more equitable distribution across the total caseload of the funds for "special" needs, as compared with the current distribution within the City and the concurrent distribution in the rest of the State.
2. Recognize more directly the dignity of the client and enhance the relationship between the client and the agency.
3. Relieve front-line agency personnel from the cumbersome, demeaning, conflict-ridden, idiosyncratic, and administratively costly process of client-by-client and item-by-item decision-making.
4. Create the necessary preconditions for a meaningful separation of income maintenance and social service function.
5. Provide a "testable" model for the administration of assistance which if validated, could be replicated within the State and elsewhere in the nation.

Evaluation

The Department recognizes the need to evaluate the simplified payment system particularly with reference to the equitable distribution across the total caseload of the funds for "special" needs. The Department will determine the informational needs necessary for evaluation purposes, and will devise a mechanism for information reporting and will evaluate operational data in terms of the project's goals.

We recognize that for this demonstration project to be "testable"--to be a genuine demonstration--that the cyclical recurring grant must be expected to meet the overwhelming majority of what the agency has traditionally defined as "special"needs. Otherwise, we would be back where we began, in the morass of idiosyncratic judgments.

We also recognize, however, that the agency must continue to maintain the capacity to respond to those situations which are genuinely "special" or "non-recurring". Sound administrative and evaluation practice requires that there be clarity prior to the implementation of this demonstration as to those needs which will and will not continue to be met on the basis of individual request.

The Department has identified three categories of such situations:

1. Special needs other than clothing and household replacements. These other special needs represent less than 10% of the total amount outlay for special grants.
2. Replacement of clothing and household possessions destroyed by disaster.
3. Expenses for household furnishings for families relocating from furnished to unfurnished housing.

Wherever possible, we will attempt to arrive at equitable flat payments based on standard criteria (Such as number of persons and number of rooms), to free caseworkers and clients from the item-by-item decision-making process.

It is clear that the introduction of cyclical payments for "special" needs constitutes an innovation in the administrative machinery and procedure for processing special grants (as contrasted with the existing statewide plan) rather than an increase in the level of assistance payments.

It is our firm belief that the nature of the urban crisis and the higher social cost of living in the metropolitan center requires a differential assistance level in these areas. If during the course of this demonstration project, the State should modify its administrative procedures to institute a "flat" grant as a substitute for special grants, the New York City Department would seek at that time modification of this 1115 project so as to use the cyclical payments to arrive at a differential level of total assistance for New York City, a level which recognizes the reality of the high social cost of living in the urban center.

Form FS-180 (Rev. 10/65)
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Welfare Administration
Bureau of Family Services

Budget Bureau No. 122-R005.1

Leave blank —
Number............ 480
Date received....... AUG 1[illegible] 1968
Action and date..... APPROVED R.O. 8/15/68
Approval period..... 7/1/68 - 6/30/69
Approved SFP grant. waiver only

APPLICATION DEMONSTRATION PROJECT (Title XI, Section 1115 of the Social Security Act)

Application is hereby made to the Bureau of Family Services for approval of a demonstration project, for the purpose described herein, in accordance with the agreement signed below:

1. TITLE OF PROJECT: Simplified Payment System

2. TYPE OF APPLICATION: Original ☒ Continuation ☐

3. REASON(S) FOR REQUESTING APPROVAL UNDER SECTION 1115 OF THE SOCIAL SECURITY ACT:
Waiver of plan requirements ☒
Cost not otherwise subject to Federal financial participation ☐
Request for special Federal project funds ☐

4. TOTAL COST OF PROJECT FOR APPROVAL PERIOD (Not to exceed one year)... —

5. SPECIAL FEDERAL PROJECT GRANT REQUEST FOR APPROVAL PERIOD .... —

6. LOCATION OF PROJECT: New York City Department of Social Services
(Statewide or identify local agency)

7. PROJECT DIRECTOR: Jack R. Goldberg, Ed. D. Commissioner of Social Services
(Name and title)

8. AGREEMENT: It is understood and agreed to by the applicant that: (1) Funds granted for this project will be used only for the conduct of the project as approved. (2) The grant may be terminated in whole, or in part, by the Director of the Bureau of Family Services. Such termination shall not affect obligations incurred under the grant prior to the effective date of such termination. (3) When funds are advanced, any unexpended balance at the end of the approval period will be returned. (4) When the project is terminated, there will be proper accounting for the Federal interest in the value of all equipment purchased from project funds. (5) The applicant will request that the project be revised whenever the approved plan of operation or method of financing is materially changed. (6) Progress reports will be submitted every six months. The final report will be submitted shortly after the project terminates. Necessary records and accounts, including financial and property controls, will be maintained and made available to the Department of Health, Education, and Welfare for audit purposes. (7) All reports of investigations, studies, etc. made as a result of this proposal will acknowledge the support provided by the Bureau of Family Services. (8) All personal information concerning individuals served or studies under the project is confidential and such information may not be disclosed to unauthorized persons. (9) The Bureau of Family Services reserves a royalty-free nonexclusive license to use and authorize others to use all copy rightable or copy righted material resulting from this project. (10) Form HEW-441 (Assurance of Compliance with the Department of Health, Education, and Welfare Regulation under Title VI of the Civil Rights Act of 1964) applies to this application and is on file with a unit of the Department ☒ or is attached ☐.

It is certified that the applicant has the legal ability to conduct this project.

George W. Chesbro., Acting Commissioner
(Name and title of authorized official)

New York State Department of Social Services
(State agency)

George W. Chesbro
(Signature)

112 State Street, Albany, New York
(Address)

August 14, 1968
(Date)

ESTIMATE OF EXPENSES BY OBJECT FOR APPROVAL PERIOD*

	Percent time on project	Regular Federal share (1)	State funds (2)	Amount requested SFP funds (3)	Total estimated costs (4)
1. PERSONNEL (List all positions by title and annual salary; use continuation sheets, if necessary.)					
Subtotal					
2. TRAVEL (Itemize by major purposes.)					
Subtotal					
3. SUPPLIES (Itemize by major types; regular Federal share may not exceed 50% of cost.)					
Subtotal					
4. EQUIPMENT (Itemize; regular Federal share may not exceed 50% of cost.)					
Subtotal					
5. ASSISTANCE PAYMENTS (Itemize; using continuation sheets, if necessary.)					
Subtotal					
6. OTHER EXPENDITURES (Itemize.)					
Subtotal					
7. TOTAL COSTS					

*May not exceed 1 year.

ESTIMATE OF EXPENSES BY PURPOSE FOR APPROVAL PERIOD*

Categorical Program All Categories

(Since the State agency must allocate project costs to specific categorical program(s), a separate copy of this page should be made out for each program involved, with each copy showing only those costs charged to the given program. All project costs are to be summarized on page 4.)

PART I. ESTIMATED COSTS FOR ASSISTANCE

	First quarter	Second quarter	Third quarter	Fourth quarter	For approval period
A. Number of new recipients added by demonstration project....................					
B. Number of recipients with grants increased due to demonstration project.......					
C. Total payments due to demonstration project.......	$	$	$	$	$
1. Federal share from regular fund............	$	$	$	$	$
2. State fund..............	$	$	$	$	$
3. Additional Federal share of assistance from special Federal project funds (may not exceed Item C minus Item C1 above)..................	$	$	$	$	$

PART II. ESTIMATED COSTS FOR ADMINISTRATION, SERVICES, AND TRAINING

	Subject to 75% Federal financial participation		Subject to 50% Federal financial participation	Total
	Services	Training		
A. Total..................................	$	$	$	$
1. Regular Federal share..................	$	$	$	$
2. State funds...........................	$	$	$	$
3. Additional Federal share from special Federal project funds (may not exceed Item A minus Item A1 above)...........	$	$	$	$

* May not exceed 1 year.

SUMMARY AND ESTIMATE OF FUTURE COSTS

PART I. SUMMARY OF ESTIMATE OF EXPENSES BY PURPOSE FOR ALL CATEGORICAL PROGRAMS FOR APPROVAL PERIOD

A. Regular Federal share (Sum of Part I.C.1. and Part II.A.1.)........................ $__________

B. State funds (Sum of Part I.C.2. and Part II.A.2.).................................. $__________

C. Amount requested from special Federal project funds (Sum of Part I.C.3. and Part II.A.3.)... $__________

D. Total project costs for approval period (This sum should be the same as the total on the Estimate of Expenses by object).. $__________

PART II. ESTIMATE OF COSTS DURING FUTURE YEARS OF DEMONSTRATION PROJECT

(Projects will generally not be considered if they require longer than 3 years to complete. Approval to carry out the project beyond the current approval period depends upon the receipt of satisfactory progress reports and a continuation request on Form FS-180. Progress reports are due every 6 months. The continuation request is due not later than 2 months before the end of the current approval period.)

A. Estimated total duration of project: Beginning 7 (Month) 1 (Day) 68 (Year) Ending 6 (Month) 30 (Day) 71 (Year)

B. Estimated total cost of project: Second year—$\_\_\_\_\_\_\_\_\_\_ Third year—$__________

C. Estimated special Federal project grant request:

Second year—$\_\_\_\_\_\_\_\_\_\_ Third year—$__________

NWRO Action Conference
Lake Forest, Illinois
Aug. 22-25, 1968

N ACTION PROPOSAL: NEW ORGANIZING TECHNIQUES IN FLRT GRANT STATES

Upto now, the Welfare Rights Movement has been built by setting up mass BENEFIT CAMPAIGNS which put money into people's pockets and which lead our groups to quick successes. This attracts members, builds loyalty and helps people quickly and visibly.

In flat grant states, and in "flat flat" grant states, we have to search out new organizing campaigns which will also attract large numbers of people, lead to quick successes and build loyalty....and this must be done without the easy strategy of minimum standards regulations.

(In a "FLAT GRANT" state, clients can still get limited special grants for emergencies or seasonal grants for school clothing, etc.

In a "FLAT FLAT"GRANT state, absolutely no special grants are available, even for emergencies. If your regular budget doesn't include it, you can't get it.

* * *

1. UNCOVER BENEFIT CAMPAIGN LOOPHOLES

Most states do have some regulations around which we can build Benefit Campaigns.

It will take a careful searching job, and you will need some help from a lawyer, an organizer or a friendly welfare caseworker. NWRO staff should also be called in to help plan these "loophole campaigns".

2. "SPEND THE RENT" CAMPAIGN

The flat grant is insufficient to cover all needs. So let's start refusing to pay rent and spend the rent money for food and clothing.
Here's how to do it:
a)Pick a neighborhood where welfare organizing is strong.
b) Start training people how to resist evictions (sitting on furniture, mobilizing crowds in hallways so police cannot remove furniture, and putting furniture back in building if it is put on street, etc.
c) then announce campaign that welfare people will not pay rent until grants are raised.
d) Call on militant organizations in the ghettoes to protect women and children from being put on the street.

3. "MAKE THEM FEED US" CAMPAIGN

--Pay your full rent, gas and light and other bills.
--Not enough money left to buy food, Food Stamps and to keep children from starving.
--Go to welfare centers (or Commissioner's office, City Hall, etc.) with hundreds of mothers and children and "MAKE THEM FEED US."
--Be prepared to stay--Be prepared for city, county and statewide newspaper and TV coverage.
--Be prepared with a lawyer to support your case with documented

(over)

"MAKE THEM FEED US" CAMPAIGN (cont.)

EVIDENCe of inadequate funds for food.
--DO NOT LEAVE UNTIL YOU ARE GIVEN EMERGENCY GRANTS.

A similar "Make Them Clothe Us" Campaign can be set up with mothers and children marching barefoot to local welfare centers, depositing piles of our children's old, worn-out clothing on caseworkers' desks (or at City Hall).

4. "GETTING PEOPLE ON THE ROLLS" CAMPAIGN

For every person now on the rolls, there is one more who is eligible to be on. These people are kept off illegally. We must:
1)Conduct advertizing campaigns to tell people that they are being illegally kept off (leaflets, posters, 2-page fact sheets, leaders appearing on radio "talk shows," contacting churches, anti-poverty organizations to spread the wordx, etc.)
2) Take groups of applicants to the welfare department and say you will not leave until people are accepted.
3) Have a lawyer with you to argue the cases.
4) Call the press to say the welfare department is not obeying its own laws.
5) Don't let people starve! Get them on Welfare!

5. HOW TO ORGANIZE--TACTICS

Our workshopt agreed on the following as basic organizing ideas x which can be used for all campaigns. Local groups, of course, can work out many other ways to organize.
a) File minimum standards forms, backed up by action, for clients coming onto the rolls.
b) Close down welfare centers by sit-ins, taking them over, etc., and then prepare to recruit new members from the clients coming into the centers for service.
c) "Flooding the procedures" by bringing in more requests for service (or for anything) than the local or citywide system can handle. Then thru action and legal support demand that all requests be met within the specified time period set by law.
d) Disruption, harassment and increased militancy
Harrassment, giving ultimatums, overwhelming centers is our greatest tactic. It gives our people courage as it builds up fear in the caseworkers mind.

If Welfare can disrupt our lives, can harass us in the centers and where we live, then we have a right to disrupt their lives and to harass them where they "live" (in the centers).

We'll stop as soon as they do!!
e) "Welfare Day" at the centers, concentrate our energy and our people to go to the centers on a regular one-day a week basis. This gives you more power, and forces welfare to deal with 25 people at once instead of 3-4 a day.

f) Get a symbolic group of ten families to refuse their checks and move their whole families into the center. This will not work with large numbers.
g) Large numbers of fair hearings around one carefully selected target issue, backed up by publicity, legal help, etc.

CORE - Congress of Racial Equality
38 Park Row, New York, N.Y. 10038

October 14, 1964

TO: CORE Chapter Chairmen

FROM: Carl Rachlin, General Counsel

RE: Rent Strike Memorandum

Many chapters have enquired about problems to be encountered in rent strike situations. Since so many requests have been made, the CORE Legal Department has prepared the enclosed memorandum, which discusses the practical problems involved and offers suggestions as to possible legal defenses.

It must be kept in mind that the law varies from state to state and local attorneys should be consulted for local practices.

If any chapter has no attorney, please advise us promptly. We have made this request several times in the past, with very little success.

I wish to thank Alvin Hirshon and Stephen Press for their efforts in making this memorandum available.

Carl Rachlin
General Counsel

Enclosure/

CR:hdl

RENT STRIKES

Prepared by CORE Legal Department

The purpose of this memorandum, which is based on the experience in New York, is to provide a framework for the establishment of rent strike programs, i.e. the withholding of rent by the tenants of a building because of the landlord's failure to maintain the building properly and provide adequate services.

Before a rent strike is undertaken, serious consideration should be given to other possible remedies. Demonstrations or meetings with the mayor would probably be the first step. Secondly, the chapter should consult with a local attorney to determine what, if any, affirmative legal actions can be taken (criminal violations, fire hazards, etc.). Third, the remedy by way of a mandatory order should be investigated jointly with legal counsel. If all of these tactics fail, or are known to be ineffective in the particular locality and tenants are made to understand the need for the drastic step, the rent strike can be initiated with greater effectiveness. This is not to say that planning for the rent strike should await this point in time. The plans and organization of the rent strike should be completed well before the first demonstration is planned. The key to success in the establishment of a rent strike program is the development of a well-planned, well-organized overall strategy. This strategy must deal with two distinct problems, first, setting up a good method of administration and record keeping, and, second, analyzing and having ready all possible legal remedies in a rent strike situation.

In preparing a case, the first step is to obtain all the facts about the evil complained of. The Department of Buildings, Fire, Health and any other relevant departments should be contacted as to any current violations against the property and for the purpose of setting a date for inspection of the building can be arranged. Before these departments are called in, the tenants should make a list of violations and point them out to the inspectors. This inspection is essential since there should be an official record of the housing violations sought to be corrected. A deliberate effort should be made to get the inspectors into each apartment of the affected building to note violations. It is urgent as well that the most important violations be noted so that the landlord may not be able to get his rent on the correction of a minor violation. Tenants should, of course, be notified in advance, in order that the inspection of the building may be completed in one day. The New York experience has taught us that it is helpful, especially in relation to tenant cooperation, to arrange a single date for all of the different inspectors to visit the building.

At this time it is advisable to have a commercial photographer take pictures of not only the recorded, but the unrecorded violations. (The photographer should be available later to testify as to the taking of the picture and each tenant should be available also to testify as to the continued existence of the condition.) Any other evidence as may be available should be kept in a safe place.

Immediately thereafter, a letter to the landlord should be sent by registered mail, return receipt requested, requesting the necessary repairs.

Having outlined the steps that should be taken to document the conditions existing in the apartments, the next problem to be discussed is that of administration of the day to day legal program.

It is important that organizers of the rent strike movement be utilized to the greatest extent possible in dealing with the administration of the program by taking responsibility for seeing that the tenants appear in court when they should, for the keeping of adequate records and for the serving of subpeonas.

Because of a possible lack of resources, cases should not be handled unless they are directly a part of the rent strike situation.

Tenants should be made aware in advance of the possible hardships which may occur if they withhold their rent from the landlord (no electricity and gas, etc. as well as other forms of harrassment). In this way they will be better able to withstand any possible hardship since they will be ready for it.

Limited financial resources were found to be a problem in New York. Funds must be available for subpoenas, photographs, plus a sum for unexpected expenses. Subpeonas will be necessary to prove the recorded violations. Friction may well arise should private attorneys ve asked to lay out money for the necessary subpoenas; it is essential that a budget for subpoenas and miscellaneous expenses be provided before the commencement of the rent strike. The funds may have to be raised from the donations of the tenants themselves. The rent strike organizer should be taught to serve the subpoenas himself. The chapter attorney can advise in this.

The proper allocation of lawyers is a very important subject. Because the legal staff in all likelihood will be volunteers, it is essential that their time be used most effectively. *A centralized unit should be formed to keep abreast of all legal matters. This would ensure that lawyers are available to handle a rent strike case on any day of the week. The office of this unit would be the place where lists and records would be filed.

The rent strike organization in New York decided that it was unnecessary for the tenant and also a waste of man-hours to assign to a single lawyer a number of files from beginning to end. Instead, each lawyer was assigned a day to be in court to handle whatever cases were in court on that day. (In smaller communities perhaps a lawyer should be assigned one building.) The tenant can and should be spoken to be the attorney during the morning of the hearing. Of course, he will have available all the records of the building and the particular apartment.

One extremely important problem which confronted the New York groups was the keeping of adequate records. The usefulness of exact and up

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*A member of the rent strike organization should also be placed in this office to coordinate the work of the organizers.

to date records should not be overlooked. The key to an extended rent strike is the keeping of good records.

Each case history must be entirely documented. It is advisable to have one person who can be held responsible for the keeping of records. There should be one file for each building with a section devoted to general complaints against the building, e.g. garbage, lack of paint, etc., and then sections for each apartment. The filing system should be completely organized before the first dispossess is served upon a tenant. (A dispossess will be served upon a tenant by the landlord when that tenant refuses to pay his rent. At this point the case has reached the court stage. The files, which have already been prepared, will be utilized.)

The following recording system and procedure has been found useful in New York.

a) The dispossess, when received by the tenant concerned should be promptly brought to the desk of the legal unit either by special messenger or by individual rent organizer.

b) The answer must be prepared, sent by mail and the original should be placed in a pile to be filed personally in court. If the answer is late, a consent (stipulation) to serve and file a late answer should be prepared and sent with the answer to the landlord or his attorney. In this latter event, the original answer, with a cover note, should then be placed in a special folder and is not filed until the stipulation is returned.

c) The case should then be added to a cumulative master list of cases which will be composed by the legal unit. If it is late, it should be so noted. The list should be made the responsibility of one person, and it should contain the following information.

I. Name of case

II.
    A. Building address and apartment and owner of building
    B. Tenant - number involved
    C. Court index number

III.
    A. Date of hearing
    B. Complaints of tenants and violations recorded

IV. Judge

V.
    A. Attorney for the tenant
    B. Attorney for the landlord

VI. Disposition - with explanation

The first three columns should be filled in immediately, the others as the information comes in. This master sheet should be added to daily as new cases come in and as information on old cases is provided. Photocopies of the lists should be made and sent to the chapter headquarters.

d) The dispossess and copy of the answer should then be placed in a white binding folder. All dispossesses for one building should be kept in one folder.

e) One person must be assigned to go to court before the court closes every afternoon to file answers and also to check on which cases would appear due for a hearing (checking calendars, have any been missed?).

f) When the hearing date card is received by the legal unit, the date of the hearing should then be recorded on the master sheet and in front of the building folder. A letter should then be sent to the tenant, giving him the date of the hearing.

This mailing should be promptly recorded on the front of the building folder.

g) Subpoenas should be prepared and served at least two days in advance of the hearing. The original subpoena, with proof of service, is filed in the building folder. A separate list of service for accounting purposes and easy checking should also be kept.

h) Late in the afternoon of each day, a list should be prepared by case name and index number of all cases on the calendar the next day. The tenants should be personally notified that evening to be ready to go to court the next day. Transportation should also be arranged by a rent organizer at this point.

i) An organizer must pick up the tenants and have them in court at the proper time. Again, if possible, one person should be held responsible for this task. He should introduce the tenants to the lawyer present on that day, and give the files to the lawyer.

j) The files should be returned to the legal unit at the end of the court day, with a notation of the outcome of the case.

k) A letter should be sent to each tenant informing him of the outcome of his case, whether or not he was present in court. Separate forms should be prepared for this purpose.

l) The date and type of letter sent should be recorded on the front of the building folder.

m) The outcome should then be recorded on the master sheet. Also, note whether an appeal will be taken.

Special Procedure

In addition to the routine procedure outlined above, special problems arise which merit discussion.

A. The landlord may claim that he has sent the tenant a dispossess and that the tenant has not answered. The landlord will then go to court and obtain, from a judge, an order of eviction, before we even hear of the case.

1. The problem arises with the receipt by the tenant of the Notice to evict pursuant to a court order of dispossess, i.e. the Marshall, or equivalent process server, is coming on a date certain, generally about 24 hours from the day the Notice is served, to evict the

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the tenant and put him on the street. To prevent the eviction, an order to show cause must be prepared with an accompanying affidavit from the tenant, and the order must be presented to and signed by a judge and then served on the landlord or his attorney and on the Marshall.

2. The paperwork, service, etc. of this procedure should be prepared in advance and be in the hands of the legal unit. The group should prepare form orders and form affidavits for the two most common reasons why a notice to evict can be stayed, namely:
   a. No proper service by the landlord originally of the dispossess; therefore, it is necessary for the Court to vacate and set aside the final order; and we ask the Court to place the matter on the day calendar for a hearing; or
   b. Final order of dispossess (an adverse decision) has been properly entered by the Court, but the tenant is the recipient of Welfare, and Welfare is delinquent (if this is the fact) in paying the rent money and therefore a further stay of eviction is desired; or
   c. Other valid reasons (consult a lawyer in your state as to possibilities, e.g. the landlord refused the rent.

B. Another problem which becomes increasingly more acute as the strike continues is that of applications or motions in court by the landlord which are meant to delay proceedings. All that can be said at this point is:

1. Be prepared for many such motions
2. To prepare a procedure to be followed as to what attorney shall answer what motion
3. The entire problem of motions brought by the landlord should be discussed in advance with the chapter's attorney. In addition, discussion should be had on the possible motions that the tenant may bring.

LEGAL DEFENSES

At the outset it should be noted that this section is not intended to be a detailed analysis of the law regarding rent strikes. Rather, this section is mainly intended to provide an outline of the possible defenses which may be utilized in different localities. The usefulness of the defense depends directly upon the particular law of each locality. It is therefore essential that each defense be researched in your own locality (if your community has a rent control statute or ordinance, this should be studied for possible remedies; e.g., can a petition be filed to reduce the rent because of the landlord's failure to provide proper services?). It is imperative that legal counsel be obtained to determine what defenses are available in each locality.

The only defense which the courts of New York County have fully accepted so far (appeal has been taken on others) is based on

Section 755 of the Real Property law of New York. This section permits a judge, in his discretion, to enter an order permitting the tenant to deposit his rent in court until the existing violations against his apartment have been corrected. For this section to be successfully applied, a violation of record, i.e. officially recorded, must exist. An actual violation must be recorded by the code enforcement agencies, e.g. Building, Fire, Health, etc. Without these recorded violations, this defense is ineffective. As has been noted, this defense is a creature of the New York statutes. The statutes of each locality must be scanned to discover if a similar statute exists. Is there an alternative remedy in other areas?

In addition to this statutory defense there are the following possible defenses:

1. Constructive Eviction
2. Actual Partial Eviction
3. Failure of Consideration

1. Constructive Eviction: Constructive eviction is a common law doctrine whereby proof is offered that the landlord makes it impossible for the tenant to continue to occupy his leased premises, and the tenant moves out, the landlord is deemed to have evicted the tenant. In New York it has been argued that the present housing shortage requires the finding of constructive eviction where the tenant has actually not abandoned the premises, even though the condition of the apartment is intolerable. Although Judge Merritt in Kings County (Brooklyn) has accepted this argument, other judges

have uniformly rejected it.

2. Actual Partial Eviction: It is a well established law that actual eviction -- that is, physical or legal exclusion from the premises -- justifies non-payment of rent. Such eviction may be total, i.e. where the tenant is excluded from all the premises, or partial, i.e. where he is excluded only from a part. In either case, no rent is payable while the eviction persists.

An argument can be made that where the landlord lets an apartment for the exclusive use of the tenant and his family, the landlord, by permitting rats and other vermin to enter the premises, has actually and physically evicted the tenant from those portions of the premises which the rats and vermin occupy. In other words, the tenant and a rat simply cannot occupy the same space at the same time(sic.). By letting the rat in, the landlord has evicted the tenant from that space.

A variation on this argument is that the tenant is actually, and not just constructively, evicted from a bathroom when a toilet will not flush, and from a kitchen with a sink that has no hot water, since in each case it is physically impossible for the tenant to use the portion of the premises for the intended, and contracted for purpose, and in each case the impossibility is due to the landlord's acts.

3. Failure of Consideration: At present this is an academic argument, but it should nevertheless be investigated. (In some states, there is an absolute duty to pay rent. The tenant's remedy

is to sue for breach of the contract to furnish services.) The argument runs as follows:

> A contract between landlord and tenant is for lease of an apartment together with services provided, for a sum of money. If the services are not provided the contract is either partially or totally breached. The landlord should be absolutely required to give heat, water, and also to keep the building free of vermin as consideration on the rent. Again, it should be noted that this argument needs to be researched in the different localities.

4. The last defense is limited to Welfare cases. Section 143B of the Social Welfare law of New York provides that where circumstances in a building occupied by a welfare tenant, are such as to endanger the health and safety of the tenant, the welfare department is relieved of its obligation to pay the rent.

In summary, the purpose of this memorandum is limited to providing the broad framework or foundation upon which a rent strike can be built. Each locality has its distinct problems, therefore it is imperative that the advice of local counsel be sought, as to whether the above defenses are valid in your locality. This memorandum should be helpful to both the local chapter and its legal staff in building an overall strategy which is attuned to the particular needs of the community and which will terminate in a successful day in court.

THE CITY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

SUBJECT: CYCLICAL GRANT FOR CLOTHING AND HOUSEHOLD REPLACEMENTS	PROCEDURE NO. 68-42
TO: Administrative Group For the Staff	August 27, 1968
	Classifications 5, 9, 18
	Replaces: P 66-31 P 68-16
	Amends: P 65-28
	Supplements: I-68-65 (5,9,18)

Distribution: C   Effective: Immediately

In order to provide better services to our clients and to meet their needs efficiently, a plan has been developed to issue automatically a special cyclical allowance for clothing and household replacements, every three months, which would supplement the regular recurring grant. It is expected that this new method of issuing grants will insure that all recipients receive these allowances which will enhance their standard of living and at the same time permit staff to render the total range of services to which clients are entitled. This program will eliminate the need for authorizing special grants for clothing and household replacements except in situations involving the establishment of a home, increase in family composition, or disasters such as fires. In these situations a flat sum will be issued based on the number of people in the family household and the number of rooms occupied. Persons in nursing homes, homes for the aged and homes for the blind are not eligible for the cyclical grant.

This automatic cyclical grant will be issued four times a year and provide an allowance of $25 per quarterly period ($100 per year, per family member) for each member of the public assistance household for whom eligibility has been certified and who is in receipt of a recurring grant.

Individual authorizations will continue to be processed by the Caseworker in these instances: When a case is accepted; when someone is added to the family composition. When this occurs during the first month of the quarterly period, the entire allowance ($25 per person) for the full quarter shall be granted; if during the second month of the quarter, two-thirds of the allowance ($17 per person) shall be granted and if in the third month of the quarterly period, one-third of the allowance ($8.50 per person) shall be granted. Authorizations shall be issued under Code 40.

The Caseworker will also continue to authorize special grants as needed for clients in nursing homes, homes for the aged and homes for the blind using special grant Code 50. Clothing and household replacements required as a result of a disaster, the establishment of a home, and special clothing for graduation and camp attendance may be authorized using the appropriate special grant codes; e.g., Code 46 for disaster clothing.

At the time the Caseworker authorizes a cyclical grant (full or pro-rata share), an entry covering the basis for the grant and the amount shall be made in the case record. Care shall be exercised to insure against duplication in the event of reopening cases within the cyclical period.

New York City Department of Social Services
August 14, 1968

1115 Proposal for Simplified Payment System

The New York City Department of Social Services, in this proposal under Section 1115 of the Social Security Act, is proposing an innovation in the administrative machinery and procedures for special grants, an innovation which we believe can form the basis of a new approach to the administration of public assistance.

The Department is proposing a waiver of those provisions of the New York State Plan which require that the issuance of financial grants for certain "special" or "non-recurring" needs be based on individual client request and individual caseworker "verification". In effect, this has meant a wide range of discretion in decision-making by staff. We are proposing to substitute a cyclical series of centrally authorized grants which will be expected to meet the preponderance of what have traditionally been defined as "special" needs for clothing and household replacements. The payments would be based on family size at the level of $100 per person per year.

The income levels for determining eligibility for assistance would be identical with the current levels.

We are proposing to implement the first full cyclical payments effective September 1. The cyclical payments will be made on September 1, December 1, April 1 and July 1.

Rationale

Through this 1115 project, the Department expects to demonstrate that a cyclical series of automatic centrally authorized grants will:

1. Result in a more equitable distribution across the total caseload of the funds for "special" needs, as compared with the current distribution within the City and the concurrent distribution in the rest of the State.
2. Recognize more directly the dignity of the client and enhance the relationship between the client and the agency.
3. Relieve front-line agency personnel from the cumbersome, demeaning, conflict-ridden, idiosyncratic, and administratively costly process of client-by-client and item-by-item decision-making.
4. Create the necessary preconditions for a meaningful separation of income maintenance and social service function.
5. Provide a "testable" model for the administration of assistance which if validated, could be replicated within the State and elsewhere in the nation.

Evaluation

The Department recognizes the need to evaluate the simplified payment system particularly with reference to the equitable distribution across the total caseload of the funds for "special" needs. The Department will determine the informational needs necessary for evaluation purposes, and will devise a mechanism for information reporting and will evaluate operational data in terms of the project's goals.

We recognize that for this demonstration project to be "testable"--to be a genuine demonstration--that the cyclical recurring grant must be expected to meet the overwhelming majority of what the agency has traditionally defined as "special"needs. Otherwise, we would be back where we began, in the morass of idiosyncratic judgments.

We also recognize, however, that the agency must continue to maintain the capacity to respond to those situations which are genuinely "special" or "non-recurring". Sound administrative and evaluation practice requires that there be clarity prior to the implementation of this demonstration as to those needs which will and will not continue to be met on the basis of individual request.

The Department has identified three categories of such situations:

1. Special needs other than clothing and household replacements. These other special needs represent less than 10% of the total amount outlay for special grants.
2. Replacement of clothing and household possessions destroyed by disaster.
3. Expenses for household furnishings for families relocating from furnished to unfurnished housing.

Wherever possible, we will attempt to arrive at equitable flat payments based on standard criteria (Such as number of persons and number of rooms), to free caseworkers and clients from the item-by-item decision-making process.

It is clear that the introduction of cyclical payments for "special" needs constitutes an innovation in the administrative machinery and procedure for processing special grants (as contrasted with the existing statewide plan) rather than an increase in the level of assistance payments.

It is our firm belief that the nature of the urban crisis and the higher ocial cost of living in the metropolitan center requires a differential ssistance level in these areas. If during the course of this demonstration roject, the State should modify its administrative procedures to institute "flat" grant as a substitute for special grants, the New York City Depart-ent would seek at that time modification of this 1115 project so as to use he cyclical payments to arrive at a differential level of total assistance or New York City, a level which recognizes the reality of the high social ost of living in the urban center.

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WESTERN UNION

W. P. MARSHALL
CHAIRMAN OF THE BOARD

TELEGRAM

R. W. McFALL
PRESIDENT

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TLX8 PD WASHINGTONDC AUG 29 1217P EDT
GEORGE A WILEY
EXEC DIR NATL WELFARE RIGHTS ORGANIZATION 1762 CORCORAN ST NW WSH

THIS IS IN REPLY TO YOUR TELEGRAMS TO THE SECRETARY AND MISS SWITZER OF AUGUST 28 CONCERNING A NEW YORK CITY DEMONSTRATION PROJECT. THIS PROJECT WAS SUBMITTED BY THE STATE OF NEW YORK FOR THE PURPOSE OF DEMONSTRATING IN NEW YORK CITY A SIMPLIFIED PAYMENT SYSTEM. BASICALLY THE EXPERIMENT INVOLVES A NEW METHOLD OF MAKING GRANTS TO COVER SPECIAL NEEDS FOR CLOTHING AND HOUSEHOLD REPLACEMENTS.

THROUGH THIS PROJECT THE STATE OF NEW YORK HOPES TO DETERMINE WHETHER QUARTERLY CYCLICAL GRANTS WILL PROVIDE MORE UNIFORMITY

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AND GREATER EQUITY IN DISTRIBUTION OF SPECIAL NEEDS FUNDS AMONG THE TOTAL CASELOAD, AID IN CREATING AMORE COOPERATIVE AND HELPFUL WORKING RELATIONSHIP BETWEEN THE RECIPIENT AND THE AGENCY, ENHANCE THE CLIENT'S SENSE OF DIGNITY, AND IN GENERAL MAKE FOR A MORE EFFICIENT AND PRODUCTIVE ADMINISTRATION OF THE PUBLIC ASSISTANCE PROGRAM.

THIS EXPERIMENTAL PROJECT WAS APPROVED IN VIEW OF OUR VITAL INTEREST IN THE ACHIEVEMENT OF SIMPLIFICATION OF ADMINISTRATION OF PUBLIC ASSISTANCE PROGRAMS AND OUR DESIRE TO HAVE STATES ADOPT MEASURES THAT WOULD FURTHER THE OBJECTIVE OF A DIGNIFIED, SIMPLIFIED, AND HELPFUL SYSTEM OF SERVING PEOPLE IN NEED, BOLSTERED BY ADEQUATE ASSISTANCE STANDARDS, AND SUPPORTED BY ESSENTIAL REHABILITATIVE PROGRAMS, SERVICEWS AND FACILITIES, AND REQUISITE STAFF.

8400. Demonstration Projects

8410. Provisions of the Act

Section 1115 of the Social Security Act, as amended, reads as follows:

> "In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of title I, IV, X, XIV, XVI, or XIX in a State or States--
>
> "(a) the Secretary may waive compliance with any of the requirements of section 2, 402, 1002, 1402, 1602, or 1902 as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and
>
> "(b) costs of such project which would not otherwise be included as expenditures under section 3, 403, 1003, 1403, 1603, or 1903 as the case may be, and which are not included as part of the costs of projects under section 1110, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such title, or for administration of such State plan or plans, as may be appropriate.
>
> "In addition, not to exceed $2,000,000 of the aggregate amount appropriated for payments to States under such titles for any fiscal year ending prior to July 1, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such titles and is not included as part of the cost of projects for purposes of section 1110."

8420. Requirements

When waiver of a plan requirement or matching of expenditures not otherwise subject to Federal financial participation or

8420. Requirements (continued)

special project funds are requested under section 1115, the State agency must:

1. Be responsible for the development and execution of the demonstration project when it is carried out by the State agency, or for its general supervision when it is carried out by a local agency.
2. Give assurance of its legal authority to conduct the project.
3. Submit applications, and when applicable, annual continuation requests and amendments, for review and approval. (See Form FS-180 Rev. and Instructions.)
4. Submit reports as required including:
    a. Quarterly financial reports (Form FS 142.7),
    b. Status reports,
    c. Progress reports are due periodically for the duration of the project (see IV-8443, paragraph 3).
    d. A final report at the end of the project.
5. Return any unexpended balance of funds advanced to conduct the project at the end of each approval period.
6. Maintain adequate records in support of all expenditures for experimental, pilot, or demonstration projects for which Federal financial participation is claimed, and identify specific expenditures as costs under an approved project to facilitate audit or review.
7. Acknowledge the support of the Bureau of Family Services in all formal reports resulting from the project.

All requirements and conditions of the Social Security Act, the Handbook and other issuances which pertain to the categorical programs are applicable to a project approved under

8420. Requirements (continued)

section 1115, except as specifically waived. If indicated or necessary, a project may be terminated in whole or in part at any time by the Commissioner of Welfare.

8430. Interpretation

8431. Purpose

The basic purpose of experimental, pilot, and demonstration projects in the public assistance programs under section 1115 of the Social Security Act is to develop and improve the methods and techniques of administering assistance and related services designed to help needy persons achieve self-support or self-care, or to maintain and strengthen family life. By enacting section 1115, the Congress recognized that the serious social and personal consequences of dependency require constant effort to improve the programs and the methods of administration in public assistance agencies.

Section 1115 affects compliance with Federal requirements and the availability of Federal financial participation under each public assistance title in various ways: (1) It authorizes the Secretary to waive compliance with any plan requirement, to the extent and for the period he finds necessary for a State to carry out a project, when potentially constructive innovations could not otherwise be tested without loss of Federal financial participation. (2) The costs of a project (whether they involve assistance, service, training, or other administrative costs) which would not otherwise be included as public assistance expenditures under the regular reimbursement formula, and which are not included as part of the costs of a project under section 1110 of the Social Security Act (Cooperative Research or Demonstration Projects, see I-1300), may be subject to Federal financial participation to the extent and for the period prescribed by the Secretary. (3) As a further attempt to encourage the development of projects of State and national significance and to assist States that do not have available funds, special Federal project funds are provided through June 30, 1967, under terms and conditions established in this chapter, to finance part or all of the State's share in the cost of a project not covered by payments under the public assistance titles and not included as part of the cost of a project under section 1110.

8431. Purpose (continued)

Section 1115 greatly increases the opportunity for Federal and State cooperative efforts in providing greater flexibility than has been possible heretofore in financing and carrying out demonstration projects. It is hoped that this legislation will stimulate innovation and experimentation in all aspects of the program.

8432. Scope

Section 1115 encompasses two types of projects:

1. A pilot or experimental project which introduces a new method or approach in an effort to learn whether it is effective and whether it might be built into normal ongoing statewide public welfare programs; and

2. A demonstration project which extends a successful method or approach to a new local or State agency program in order to make necessary adaptations and promote its acceptance and support on a statewide basis.

In enacting section 1115, Congress did not include "research" projects. This omission emphasizes the focus on action or operational innovation rather than basic research or fact-finding studies or surveys.

Projects may involve experimentation with novel principles or procedures, including adaptation of methods from other fields which offer hope of improving any aspect of the public assistance program or reducing the need for assistance. For example, they may provide assistance to needy individuals who would not otherwise be eligible; increase the level of payments; provide social services not presently available, including such complementary services as homemaking and home management; experiment with new patterns and types of medical care; test new approaches to staff development; permit purchase of services or other financial arrangements when necessary services for needy individuals are not available in public welfare agencies; or, involve new methods of improving any aspect of public assistance administration, including administrative methods, policies, and procedures. They may be of special significance to one State, a group of States, or of national importance.

8433. Waiver of Plan Requirements

Authority is given the Secretary to waive compliance with any of the plan requirements of section 2, 402, 1002, 1402, 1602, or 1902 which would impede States in carrying out significant demonstration projects under section 1115.

Congressional intent is evidenced by the following quotation from the reports of the House Ways and Means Committee and the Senate Committee on Finance on the Public Welfare Amendments of 1962 (H.R. 10606):

> "The public assistance titles of the Social Security Act contain a number of requirements on the States for the approval of a State plan ... These plan requirements, however, often stand in the way of experimental projects designed to test out new ideas and ways of dealing with the problems of public welfare recipients. One such requirement, for example, is that the plan be in effect throughout the State. A demonstration project usually cannot be statewide in operation. For this reason, the Secretary would be authorized to waive plan requirements to the extent he believes this action is necessary to carry out a demonstration or experimental project, if such project furthers the general objectives of the program. This would mean that the regular Federal participation would be available for such projects whether they involve assistance, service, or other administrative expenditure."

Federal authority to waive plan requirements in the Social Security Act will often have to be supplemented by permission from appropriate authorities to waive State laws, rules, and regulations.

8434. Costs not Otherwise Subject to Federal Financial Participation

Section 1115(b) provides that the costs of projects "which would not otherwise be included as expenditures under section 3, 403, 1003, 1403, 1603, or 1903 as the case may be, and which are not included as part of the costs of projects under section 1110, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such title, or for administration of such State plan or plans, as may be appropriate." This is interpreted

8434. Costs not Otherwise Subject to Federal Financial Participation (continued)

to include all assistance, service, training, and other administrative costs of projects that are consistent with the purpose of and meet the criteria for experimental, pilot, and demonstration projects under section 1115.

8435. Special Federal Project Funds

Section 1115 authorizes special Federal project funds through June 30, 1967, to assist States that do not have funds available for developing such projects, whether or not waiver of plan requirements or costs not otherwise subject to Federal participation are involved. Federal funds, not to exceed $2,000,000 of the total annual appropriations for all the titles, are available in the fiscal year ending June 30, 1967 for payments to States to cover part or all of the State's share in the cost of projects whenever this cost is not met in part or all by section 1110.

8436. Criteria for Experimental, Pilot, and Demonstration Projects

All project applications coming under the provisions of section 1115 will be appraised with reference to whether they are consistent with the purposes of section 1115, namely, to assist in promoting the objectives of title I, IX, X, XIV, XVI or XIX in a State or States in testing new methods of administration, and in helping needy persons to attain self-support or self-care and strengthen family life by testing out new ideas and ways of dealing constructively with their problems.

The basic criteria which will be applied to all demonstration projects under section 1115 are as follows:

1. Significance. -- The new approaches or methods should be of interest to one or more State agencies administering the federally aided public assistance programs. Projects of interest to a specific locality will be appraised with reference to their significance for the operation of the statewide program. Projects already financed from other sources cannot usually be approved under section 1115 on termination of the original project funding since they would no longer be new projects.

8436. Criteria for Experimental, Pilot, and Demonstration Projects (continued)

2. Practicality. -- The new methods or approaches should be feasible for broader implementation in statewide public welfare programs. There should be some prior commitment to continue successful project activities or methods when the special funding or other arrangements possible through section 1115 no longer apply. It is recognized that when projects involve waiver of Social Security Act plan requirements and variations from State statutes enacted to conform with the Social Security Act, any prior commitment made by the public welfare agency will relate to efforts to obtain necessary Federal and State legislation.

3. Project plan. -- The application should include a precise description of goals, innovative methods or approaches, and the plan for determining their effectiveness. This plan should clearly outline the methods to be used for evaluating the goals, innovative methods or approaches contained in the application. It should include the criteria used, the results to be achieved, and any major problems anticipated. The design, methodology and details of the evaluation plan must be consistent with the demonstration goals of the project. Applications will be appraised with respect to the clarity of the plan and the ability of the agency to provide for methods or organization, administration, and staffing which hold reasonable promise of carrying out the project effectively.

   Whenever an approved project is materially changed or new objects of expense are found to be necessary for its successful completion, it will be necessary to submit amendments for review and approval by the Bureau of Family Services.

8440. Federal Financial Participation

Federal financial participation in experimental, pilot or demonstration projects under section 1115 is available only with respect to activities that take place after the Bureau has transmitted a letter of approval to the State agency. Ordinarily, Federal financial participation in such projects

8440. Federal Financial Participation (continued)

is limited to not more than three years. Approval must be secured each year that the project is in operation. The project year need not coincide with the fiscal year. Special Federal project funds are only authorized through June 30, 1967, and unless this authorization is renewed, this date will mark the end of special Federal project funding. Other Federal financial participation in projects is not limited by this date.

8441. Participation From Regular Public Assistance Grants

When the Secretary waives compliance with any plan requirement or specifically permits costs not otherwise subject to Federal financial participation and not included as part of the costs of projects under section 1110 to be subject to Federal participation for purposes of a demonstration project, the same proportion of Federal financial participation is normally available for expenditures for demonstration projects as for ongoing expenditures for services, staff training, assistance, medical care or administration under title I, IV, X, XIV, XVI, or XIX, with the modifications provided in items (1) and (2) below. This means that the open-ended public assistance grants will be the primary source of Federal funds for demonstration projects. (See IV-8442 for additional Federal participation available from special Federal project funds.) For example, projects may be designed to:

1. Demonstrate the usefulness of services which have been specified or prescribed by the Secretary with respect to a title as necessary to prevent or reduce dependency (Handbook IV-4400 and 4500). Federal financial participation would be at the rate of 75 percent with respect to the cost of these services, provided the requirements listed in Handbook IV-4000 are met, or provided the services have been specifically approved

8441. Participation From Regular Public Assistance Grants (continued)

for such Federal financial participation under section 1115. 1/

2. Test the effectiveness of formalized training over a definite period of time to prepare staff to provide specified or prescribed services. Federal financial participation would be available at the rate of 75 percent when the State provides the prescribed services as required in IV-4000 and meets the requirements of III-3000, or provided the training expenses have been specifically approved for such Federal financial participation under section 1115. 1/

3. Test the effectiveness of making assistance payments in the full amount of need in accordance with the State's assistance standards in a State now limiting the payments. Federal financial participation would be obtained by including the full payments made to recipients involved in the project in the amount computable for Federal financial participation in the program.

4. Demonstrate the effectiveness of certain administrative methods and procedures. Federal participation would be at the rate of 50 percent, except in projects involving title XIX when professional medical personnel costs and supporting staff would be reimbursable at 75 percent.

1/ Title XIX provides for Federal financial participation at the 50 percent rate with respect to services and training (except that the 75 percent rate is applicable to training of skilled professional medical personnel, and supporting staff, of the State or local agency). However, it is anticipated that services for title XIX recipients and training for title XIX staff will ordinarily be furnished under the pertinent money payment titles, and the 75 percent rate will be available as appropriate under such other titles. (See Handbook Supplement D, sections D-6240, D-624[illegible], D-7250, and D-7550).

8441. Participation From Regular Public Assistance Grants (continued)

The assistance costs, costs of services or training matchable at 50 or 75 percent, and administrative costs matchable at 50 percent are subject to the regular estimate and expenditure process for each categorical program involved in the project. (See V-2300.)

The administrative and financial records will need to identify specific expenditures, by program, as costs under an approved project to facilitate audit or review in relation to approved deviations from the State plan or the inclusion of costs not generally subject to Federal financial participation. This information will be reported quarterly on a separate supporting schedule, Form FS-142.7, to be submitted with the expenditure statement, Form FS-142 series. A separate Form FS-142.7 is to be submitted for each project and for each program involved in a project, whether or not special Federal project funds are granted.

8442. Special Federal Project Funds

Section 1115 authorizes special earmarked Federal funds to help carry out a demonstration project. Such funds are available for payments to States to cover part or all of the State's share of the cost of such projects not covered by payments under IV-8441 and not included as part of the costs of projects for purposes of section 1110. Federal funds not to exceed $2,000,000 are authorized for expenditure for each fiscal year through June 30, 1967, to be available from the aggregate amount appropriated for payments to States under titles I, IV, X, XIV, XVI, and XIX.

Special Federal project funds are intended to assist States in defraying the costs of developing and operating demonstration projects by paying part or all of the State's share of such costs, including (1) assistance payments; (2) medical payments; (3) administrative costs, which may cover the salaries, regular benefits, and travel of personnel working on a project and outside consultants, such as schools of social work; (4) the cost of making or acquiring materials or equipment, or the supervision of work in connection with a community work and training program; (5) consumable materials, such as office supplies and building maintenance materials utilized

8442. Special Federal Project Funds (continued)

on a project; and (5) rental or purchase of special equipment necessary to the completion of a project. If the Bureau authorizes purchase of special equipment, title to such equipment is to be vested in the State agency, and must continue to be accounted for and used in behalf of the public assistance programs. It is preferable that special equipment be rented rather than purchased with special Federal project funds, unless there are definite savings from purchase. In addition, when it is necessary to carry on a demonstration project in a building apart from the building in which the State or local agency office is located, special Federal project funds may be approved to pay the cost of rent, light, heat, and maintenance; if additional office space is necessary for a project expected to last longer than one year, the State agency is expected to follow established Bureau policy as set forth in V-4500 in regard to rates and payment for such costs.

Special Federal project funds will not be approved to pay as rental charges the cost of amortizing the construction or purchase of publicly owned buildings, depreciation of existing buildings or equipment, or the purchase of motor vehicles, unless a special vehicle is required to carry out a project and the agency can give assurance that the innovative activity will be continued when special Federal funds cease.

Special Federal project funds are authorized only for the approval period, and cannot be carried over from one approval period to another.

8443. Reports

Reports of the progress and results of the projects are necessary for the evaluation of projects and for accountability for Federal funds.

Such reports include:

1. Quarterly financial reports of the use of special project funds by category incurred or paid.

8443. Reports (continued)

2. Status Reports

a. A monthly statement of cumulative special Federal project funds by object of expenditure. In the event that the rate of expenditure is below expectations, an explanation of the reason and a statement regarding the anticipated rate of expenditure for the balance of the project year should be included. At the beginning of the fourth quarter of each fiscal year, or sooner if appropriate, expenditure patterns will be reviewed by the Bureau, so that excess funds may be reallocated to other projects.

If a project has not started, and as a consequence no fiscal obligations have been incurred, a monthly report should be submitted with the reasons why the project is not underway. (See item c. below for extensions.)

b. When a project is withdrawn by a State agency after approval, the Bureau of Family Services should be notified immediately, giving the reason for withdrawal.

c. When a project is delayed in starting by two months or more, an extension may be requested. The beginning date of the project will remain unchanged, but the end date will be moved forward generally by the number of months the project was delayed.

3. Progress Reports

The first progress report covering a period of 9 months will accompany the request for continuation due at the end of the tenth month. Thereafter progress reports are to be submitted every 6 months for the duration of the project.

An explanatory schedule follows:

a. First report covers 9 months and accompanies first continuation request;

b. Second report covers 10th month through 15th month;

c. Third report covers the 16th month through the 21st

Carl Rachlin

1. Jurisdiction.

Jurisdiction is conferred on this court by 42 U.S.C. Sec. 1983 which permits civil action in United States District Courts to seek releif from deprivation of rights, privileges and immunities secured by the Constitution and law/ of the United States under color of state statute, ordinance, regulation, custom of usage (~~if a State~~). The rights, privileges and immunities sought herein to be redressed are those ~~issued~~ secured by the due process and equal protection clauses of the Fourthenth Amendment to the Constitution of the United States and by the Social Security Act, 42 U.S.C. Sec. 601-609 (and 42 U.S.C., Sec. 1315).

2. The amount in conflict is in excess of $10,000.

3. Plaintiffs, , are residents of the City and State of New York. They are welfare clients of the Department of Social Services of the City of New York and are presently receiving funds from said Department including a distribution of monies known as the "cyclical recurring grant." They bring this action on behalf of themselves and on behalf of all those persons similarly situated.

4. (Dependents -- description of process)

5. Prior to September 1, 1968 the New York City Department of Social Services, pursuant to State law (?) issued financial grants for certain "special" or "non-recurring" needs to be based on individual client request

and individual caseworker verification. Beginning on September 1, 1968, through authorization of Wilbur Cohen, Secretary of HEW, acting under 42 U.S.C., Sec. 1315, the N.Y.C.Department of Social Services instituted a "demonstration project" whereby a cyclical recurring grant of $25 to be paid each client each quarter year was substituted for the above mentioned special non-recurring grants.

6. The cyclical recurring grant of $25 per quarter is considerably less than the (average) special non-recurring grant which it superceded and to which the plaintiffs were previously entitled.

7. Plaintiffs allege that the new system, authorized by the Secretary of HEW under 42 U.S.C. Sec. 1315 as a demonstration project is not a bona fide demonstration project.

(a) The "demonstration project" covers the entire City of New York. There is no precedent for a "demonstration project" of this enormity. As a program of this nature increases in size it becomes less and less of an experiment and more and more of a permanent substitute. Experiments are usually conducted on a small scale to test their validity. When one is conducted on a large scale, then the question must arise as to whether ~~ti~~ it is truly an experiment or in reality something else.

(b) A demonstration project authorized by 42 U.S.C., Sec. 1315 may be instituted in order to experiment with administrative techniques (42 U.S.C., Sec. 1310). However, in order to comply with 42 U.S.C., Sec. 1315 the project must, in the judgment of the Secretary of HEW, be likely to assist in promoting the

the objectives of sub-chapters I, IV, X, XIV, and XIX of the Social Security Act in the State involvdd. Plaintiffs allege that since the result of this project is to decrease the amount of per capita funds for certain needs it is inherently impossible for te objectives of the aforementioned sub-chapters to be promoted thereby, since the project cannot assist in promoting these sections of the Social Security Act, the Secretary acted arbitrarily and in abuse of discretion in approving said project. The amount of the cyclical clyical recurring grant was arbitrarily and capriciously fixed by (   ) without any regard for the actual needs of the plaintiffs and other welfare clients. The result was to deprive plaintiffs and others of funds to which they were otherwise entitled without due process of law in contravention of the Fourteenth Amendment to the U.S.Constitution.

(c) By an admission of the New York City Department of Social Services (letter of 8/14/68), the department recognizes "......that for this demonstration project to be 'testable' -- to be a genuine demonstration -- that the cyclical recurring grant must be expected to meet the overwhelming majority of what the agency has traditionally defined as 'special' needs." (emphasis added). Since the grant is considerably smaller than the grants under the prior system (which were thought then to be inadequate) it is inherently impossible for the project to attain the Department's own standards and therefore, in the Department's own words, it is impossible for the project to be a genuine demonstration.

8. Since the project is not a true demonstration for the reasons enumerated above and since the result is to deprive the plaintiffs and others similarly situated of monies to which they would otherwise be entitled, the deprivation is one without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

9. New York State Social Services Law§76 provides that each city public welfare district is responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself. Sec. 131 (1) provides that it shall be the duty of [illegible] (officials), insofar as funds are available, to provide adequately for those unable to maintain themselves. Sec. 131 (3) states that a principal consideration in determining the adequacy of assistance in each case shall be the page 9 sufficien thereof for maintenance in accordance with standards of public health in the community with due regard for variation in cost from time to time betwe localities.

10. Plaintiffs allege that in fixing the amount of assistance for certain needs at $100 per year, the Department has made no effort to determine whether this sum is adequate to meet the needs of their clients. Although

the Department admits (letter of 8/14/68) that there is a cost of living differential between New York City and other areas of the State, no effort has been made to recognize this differential in calculating the city cyclical recurring grant (except to say that if the State should institute a similar program elsewhere the Department would adjust the grant accordingly).

11. The result is that welfare clients in other areas of the State are receiving funds in accordance with their needs while those in New York City, including the Plaintiffs, are having their actual needs ignored. Although the Department recognizes that the cost of living is higher in New York City lthan elsewhere in the State, welfare clients in New York City are receiving less per capita for certain necessities than those outside New York City. in contravention of Sec. 131 of the Social Security Law. The (State Department) and (City Department) are therefore denying the Plaintiffs and others similarly situated equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

12. The cyclical recurring grant of $25 per client per quarter was determined by arbitmary and capricious means. It bears no relationship whatsoever with the actual needs of the Plaintiff and others similarly situated. The Department recognized this fact when it stated (letter of 8/14/68) that one of the objectives of the project was more equitable distribution

(of funds) over the total caseload. In short, in an arbitrary and capricious manner the Department is sehking to divide the pie in as many slices as there are clients instead of attempting to determine what the actual needs of their clients were, or, more important, if the grant would meet these needs. The main consideration was not the needs of the people, but a fixed sum of money set aside.

13. There is, however, more money available to meet the special needs of the clients of the New York City Department of Social Service. In its letter of August 14, 1968 the Department states that if the state were to institute a similar program for other areas of the State, the City Department would modify its program in order to account for the differential in cost of living. Thus the amount granted to each client depends neither on the needs of that client not the total amount of funds available. Denial of funds to which Plaintiffs and others are otherwise entitled is therefore totally arbitrary and capricious so as to amount to denial of due process in violation of the Fourteenth Amendment.

Citywide Coordinating Committee
of Welfare Groups
514 W. 126th St.
New York, New.York
September 16, 1968

RENT REVOLT FACT SHEET

The Minimum Standard Campaigns succeeded because:

1) We were able to build our membership by getting money for clients. Strong groups and successful campaigns for money pressured the Department and forced the City to negotiate with us.

2) Thousands of clients who do not belong to groups saw our success and they also put pressure on the Department.

3) We are willing to use fighting, militant tactics so that the way we get our money bothers and disrupts the Department.

4) The Department and the City cannot accept either spending all that money we forced out of them or accept the disruption that we create in the centers.

5) We have a city-wide organization which speaks with one voice for all clients.

The Flat Grant cuts down on our money. There are not enough benefit regulations left to build a campaign. The Flat Grant also cuts down on our ability to disrupt the centers and the City. Our power to change the system will decrease.

WE NEED TO FIND A NEW WAY to keep money coming from the City in a way that disrupts the system. Then we will have the power to force the City to listen to us.

A RENT REVOLT could give us an issue we can use.

All buildings with any violations in them are illegal!!! But the City does not enforce the regulations against these illegal buildings.

Mayor Lindsay does not take advantage of the money he could get from the Federal Government to build more public housing and lease apartments in middle income buildings.

Welfare families have the least chance of getting into projects.

Landlords go on collecting high rents for slums. The landlords live off the Welfare Department while the clients suffer.

Past rent strikes have failed because tenants put the blame on the landlords instead of the City.

Past rent strikes have failed because they follow the complicated legal procedures set up by the City. These procedures with inspectors, courts, legal evidence and all the rest keep tenants from really getting action. Our conditions are getting worse instead of better.

Future rent strikes must not get bogged down in playing the game according to the City's rules.

Instead, let's keep our rent money and SPEND THE RENT! Let's use the rent as a welfare benefit for clothing and furniture because we are no longer getting our minimum standards!

We have two choices:

1) We can recruit a total of 1000 families from one target "test" area in each borough. We can get a lot of people in each area to do it together and to resist eviction by trying to keep the marshalls from taking our furniture. (It is important to remember that we could not guarantee that no one would be evicted.)

2) Or we can recruit the 1000 families from all groups in Citywide, spend the rent but not worry so much about resisting evictions and just move out into hotels, housing projects, co-ops, and luxury housing, taking over apartments in them.

The Rent Revolt need not be limited to welfare recipients. Any tenant could join.

Citywide Coordinating Committee of Welfare Groups DRAFT.
514 W. 126 St., New York, N.Y. DO NOT DISTIBUTE.

RENT REVOLT '68-69

1. Q: Why did the 2½ year Minmum Standards Campaign succeed and where do we go now?

A: Since 1965, the welfare rights movement in New York City has grown tremendously because:

1) we are able to get benefits--money--for our members to the tune of tens of millions of dollars a year. This builds our groups and forces the city to negotiate with us.
2) Tens of thousands of clients who do not belong to our groups and whom we never see also get the benefits of our campaigns and put extra pressure on the Department.
3) We are willing to use fighting, militant tactics so that the way in which we get our money bothers and disrupts the Department.
4) The Department and the city cannot adjust themselves either to spending all that money or to accept the increasing disruption of the centers.
5) We have a Citywide organization which speaks with one voice in behalf of clients.

The flat grant, therefore, not only cuts down on the money we can get but City Hall hopes that after a month or two of our "letting off steam," the situation will return to "normal." (Normal--that is--before 1965, before the Minimum Standards Campaign.)

Our problem, therefore, is to find a way of continuing the flow of money into people's pockets, doing it in a way which bothers and disrupts the system so that they are forced to pay attention to us, taking advantage quickly of the angry mood of our folks, and do all this with thousands of clients so that the Department and City Hall find it impossible to adjust to our actions.

A rent revolt fits the bill perfectly.

2. Q: But isn't it possible to substitute other campaigns for minimum standards, like telephones, emergency assistance, recruiting new clients onto the welfare rolls?

A: No, not really. There are five or six welfare benefit regulations which we *can* and *should* build campaigns around. But even if we put them all together, it will not be big enough or costly enough for welfare to pay attention to us--they could easily *adjust* to it and *absorb* it and we will lose our power to negotiate.

3. Q: But why a rent revolt? Why not education, jobs, etc?

A: Don't forget, our strength comes from costing the system money and by getting that money in ways which bother the City. Only the housing situation gives us this opportunity.

4. Q: We say that the housing system is criminal, illegal, and immoral. Why is that?

A: All buildings which are substandard, which have any violations in them are *illegal* buildings (even if violations are not recorded by the city).

Building and Health Department regulations are not enforced, the courts give landlords $15 fines for hazardous violations and no fines for "average" violations.

The Spiegel Act is not really enforced because very few buildings and inspected and only the most extreme conditions lead to being placed on the Spiegel Act list.

Lindsay does not take advantage of money which he can get ~~fxx~~ from the Federal government to build public housing, and to lease apartments in middle income buildings. Welfare families have the lowest priority for the few project apartments which become available.

With all this, landlords go on collecting their rents, poor families suffer and die and $200 million a year is poured into the pockets of slum landlords with Lindsay and Goldberg refusing to enforce the law.

5. Q: Will a rent revolt really be as effective in building the movement as minimum standards was?

(cont.)

A: Yes, it can be. All the elements in Answer#1are there:
1) Benefits. Spending the rent money will give people between $60 and $1X30 a month, or an average of $250-300 for the next three months.
2) Size of campaign. As with minimum standards, tens of thousands of tenants will eventually join us if our tactics prove successful, even though we will only be directly responsible for the few thousand tenants carrying our membership cards.
3) Tactics. A rent revolt is an angry, fighting campaign. It is guaranteed to get immediate attention from the press and from City Hall and will bother and disrupt the whole landlord-tenant system.
4) The City will not be able to adjust to and absorm our actions and go on its merry way, because if our first thousand families "get away with is," the news will spread to every block in the City within one week.

6. Q: Why did the 1963-64 rent strike fail?
A: Mainly because it depended on the city agencies to do their job and the courts "permitting" the tenants to withhold their rent, with the rent being deposited in the court. Nothing could happen, therefore, until an inspector visited the apartment, sent in an accurate report, had it entered in the Buildings Department's records, and had the records delivered to the court with the judge agreeing that conditions were bad enough to permit the withholding of rent.
None of this worked because the City and the courts are heavily influenced by white landlords and politicians who make their profit by owning rat-traps in black andPuerto Rican ghettoes, collecting rents and giving illegal, inferior services.
Very few welfare clients joined the rent strike because they would have had to turn their rents back to the City anyway.
All of the organizers and leaders' energies were spent on following the City's rules and regulations so that little attention was given to resisting evictions and spreading the rent strike throughout the City. Where evictions were resisted, as in Harlem, they received page one headlines and many evictions did not take place.
At the height of the rent strike, no more than three to four hundred buildings were affected, and, most important, the present black militancy in the ghettoes had not yet emerged. There was also no organization which could coordinate rent strike work throughout the city.

7. Q: Are there now "legal" rent strikes? Do they work?
A: The State Legislature, as a result of the 1963-64 rent strike, gave Mayor Wagner two rent strike laws which are still in effect.
The reason why very few buildings in New York City use these laws is that they set up such complicated machinery that it takes three to six months to get a judge to agree to a rent strike with only a tiny trickle of money, if any, being returned to fix up the building and nothing going to the tenants. (Briefly, one third of the tenants ina building must agree to go on strike. They then deposit their money with the court only if there is a written record in the Buildings or Health Departments that hazardous violations are on record. The court will thenappoint an "administrator" who will use the rent money to repair the building. None of this really works.)

8. Q: What can be learned from the 1963-64 rent strike?
A: City Hall, the courts, politicians and landlords are deathly afraid of anything which will affect jousing and rents. Although a small number of tenants canget tremendous publicity and shake up the system, it takes a massive rent strike involving thousands of tenants to force the housing system to negotiate with the coordinating group and to begin to think of bringing in new money to build housing and to force the courts to deal with the landlords. (In our case, we can also press for re-opening of special grants for large furniture items, large winter clothing items, minimum standards for new clients, etc.)
We cannot get bogged down in playing the game according to their rules. We must keep our rents as a welfare benefit and

organize politically to meet the problem of evictions and resistance.
An excellent job was done in using the press, radio and TV, rallies, marches, bringing rats to court, visiting politicians, etc.

9. Q: Is the time ripe now with winter coming?
A: If the ideas make sense, and give us the possibility of some victories, it then makes sense to organize when the iron is hot. The iron is hot right now because our folks are angry at the flat grant and looking for leadership to tell them what the next step is.
Also, the combination of no winter coats this year, and winter upon us, sets the stage perfectly for rent revolt. A thousand families threatened with eviction with snow on the ground is a greater political problem for City Hall and involves a greater risk of upheavals in black and Puerto Rican areas than the same thousand families threatened with eviction in July.

10. Q: How can we run a rent revolt? What choices in strategies do we have?
A:1) Register 1000 clients (250 from each borough) on the attached registration forms. Client is given a membership card and is educated so that she knows whom to call when she gets a dispossess or Notice to Vacate. She is also brought in as a member of the welfare rights group.
2) The client is told not to go to the welfare center to ask for a duplicate check, since, after the first month, the check will be restricted if it happens again. Asking for a duplicate check therefore means that the client will only save one month's rent, and will no longer be part of the rent revolt. We feel sure that most landlords will not call Welfare until the second month, giving us time to get underway.
3) Evictions: Pay careful attention to develop plans to resist evictions, including sitting on furniture, blockading apartments, bringing in other group members, neighbors, and men from the block to resist evictions. We will also need support from other ghetto organizations.
When clients are originally recruited and before they sign the Membership Card, it must be made clear that we cannot guarantee that they will not be evicted, that we cannot guarantee that a lawyer will be available for every one of the hundreds and thousands of dispossesses and Notices to Vacate which will be forthcoming. We are going to arrange for legal support and we are going to organize among our own folks in the slum areas to resist evictions, but this Rent Revolt '68 Campaign, involves no guarantees. It is a poor people's revolution and will have to depend on its own people to carry it out. If a welfare ~~client~~ client wants to join but "cannot afford to be evicted," she should not be recruited.

4) Recruiting lawyers. Citywide will meet with the top staff of the OEO Neighborhood Legal Services Program, so they can be prepared for Dispossess and 72-hour Notices to Vacate. However, whether or not the available lawyers will respond to us will depend on local welfare groups going directly to their own CALS offices and insisting on legal assistance.

5) A massive training program will be necessary to educate everyone of our leaders throughout the City in Rent Revolt '68. Distribution of forms, information, and all coordination at the local level will be done through the borough offices.

6) Since so much depends on publicity in the press and TV and on publicity among our people on the streets, Citywide and the Borough Councils will have to find the money and assign leaders to be in charge of distribution of leaflets, posters, gummed-back slogans, and political campaign-type literature.
7) When evictions occur, we could have plans ready--if we have the money--to have our own trucks and drivers transfer furniture to neighborhood churches, etc. However, we could do this only with small numbers of people, or with expensive items of furniture.
~~When evicti~~
8) When evictions occur, we will have plans already prepared to move the evicted families downtown to luxury hotels, Gold-

(cont.)

xxxx berg's office, etc. This is more effective than searching and searching for other badly run-down apartments for the clients to move to. Other families who are not being evicted will join their brothers and sisters in this "Operation Better Housing" and will move into the welfare centers with them.

We will also make plans to move into newly built co-ops and luxury housing (like our sisters at Masaryk Towers, recently).

There seem to be at least two choices to be made in the above organizing plan. (There may be others.)

Choice Number 1: start organizing in one selected area in each borough only. All the energies and leadership should be united to support that one area.

Do an extremely careful job of educating clients, contacting lawyers, and lining up all the back-up supports, storage places, etc.

The goal of cjoice is to keep evictions--a small % of the total Rent Revolt membership. The reasoning is that large numbers of evictions, especially in the early stages, before we get enough publicity and before we develop political muscle, would be so dangerous that it might kill Rent Revolt '68 before it got underway. We have to buy time to develop a ghetto fight-back spirit and to develop contacts with groups and people in black and Puerto Rican areas who will stand side by side with us.

In order to keep evictions down in the early stages, the greatest emphasis has to be placed on resistance to evictions. If we haven't the strength and conviction to follow through on Qxxx# 10 #3 and barricade our apartments, etc., then more evictions will take place and we go to Choice #2.

The other key part of keeping evictions low is based on a very tight communication system, hard-working, well-trained block captains. . . . all leading to quick response to each eviction attempt.

The main point in confronting the system in Choice Number One lies in the process of resisting eviction, xxxxx in forcing the Marshals and the cops to back off.

Choice Number 2: Recruit the first 1000 Rent Revolt '68 members from all our groups in Citywide.

Do an extremely careful job of educating clients, contacting lawyers, and lining up all the back-up supports, storage places, etc.

The goal of Choice # 2 is to prevent large-scale evictions using the same resistance tactics as in Choice # 1. However, we recognize that since a truly massive Rent Revolt is needed if we are to be able to negotiate with the City, we will wind up with thousands of clients in Rent Revolt . . . . and no matter how you slice it, large numbers of evictions will occur.

This must be faced squarely, and faced at the beginning of the Rent Revolt, so that only clients who are willing to face evictions are recruited. Lawyers and resistance tactics will prevent, or stall, many evictions, but Choice # 2 recognizes that many clients will be evicted.

What we have to do, therefore, is plan to turn a problem into an advantage and give great emphasis to moving evicted clients into hotels, welfare centers, half-finished projects and luxury housing, etc.

The main point in confronting the system in Choice #2 lies in moving evicted clients into hotels, luxury apartments, welfare centers, etc.

(cont.)

11. Q: What happens if tenants who are not on welfare want to join Rent Revolt '68?

A: Great! What better way to make this campaign affect the total ghetto? This will bring in the groups which will jump at the chance to work with us on issues which go beyond "just welfare.

12. Q: Wouldn't we then "lose control" over the Rent Revolt?

A: I don't think so. We will probably be working with other groups as they get drawn into it, but Citwide is the only group in New York which has a network of contacts and groups in every poor area of the City.

Draft of membership card - front and ~~&~~ back -
Do not distribute

Citywide Coordinating Committee of Welfare Groups
514 W. 126th St., NYC 10027 Tel. 366-6216(6217)

RENT REVOLT 1968-69 MEMBERSHIP CARD

FRONT

Name: ______________________________

Address: ______________________ Apt: ______

Welfare Group: ______________________________

Your BLOCK CAPTAIN is: ______________________

Address: ______________________ Apt: ______

If you get a DISPOSSESS or EVICTION NOTICE, call a lawyer immediately at:

For information, go to your Welfare Rights Group or call your BOROUGH WELFARE ACTION COUNCIL at:

____
Borough Chairman

BACK

RENT REVOLT PLEDGE

I PLEDGE not to pay my rent and to use my rent money to clothe and feed my family and to purchase needed furniture.

I PLEDGE not to pay my rent until Mayor Lindsay and Commissioner Goldberg stop paying rent for illegal rat-traps and begin to prosecute landlords and rebuild the slums.

I PLEDGE to help build my welfare Rights Group into a strong, united fighting organization so that I will be able to protect my family and my community.

____
Member's Signature

this information can also go on gum-backed stickers for each neighborhood + given to each member to paste on her kitchen wall + also plastered on billboards, buildings etc

CITYWIDE COORDINATING COMMITTEE OF WELFARE GROUPS, 514 W. 126 St.

REGISTRATION FORM
RENT REVOLT 1968-69

(1) NAME: ____________ ____________

(2) ADDRESS: ____________________

Don't forget! Rubber stamp CARbon

APT. ________ (If apt. no. not clearly marked ON DOOR, indicate by: floor, back/front, left/rt.)

NUMBER IN FAMILY ____________

ADULTS: ______ CHILDREN ________

YOUR PHONE ________________
NEIGHBOR'S PHONE ____________

(2) MONTHLY RENT: $________ Do you pay monthly____ Semi-monthly_____?

Day of month youpay your rent ____________

LANDLORD ________________________________

ADDRESS ________ ________________ TEL: ____________

(3) Welfare Center : ____________________________

CASE #: __________ UNIT #: __________

(4.) RENT REVOLT PLEDGE:

I pledge not to pay my rent and to use my rent money to better clothe and feed my family and to purchase needed furniture.

Signature: ________ ________________

Date: ________________________

(5)

Month	Amt. of Rent	Paid	Not Paid	Comments:
Nov. 1968				
Dec.				
Jan. 1969				
Feb.				
March				
April				
May				
June				
July				

DRAFT

CITYWIDE COORDINATING COMMITTEE
OF WELFARE GROUPS
514 West 126 Street, N.Y. 10027

TO WELFARE RIGHTS GROUPS LEADERS:

ATTENTION!!

The enclosed material on "Rent Revolt '68-69" is for you to read carefully.

It is an action plan which the Executive Board and Citywide staff have prepared as the ONLY ALTERNATIVE to the $25 Flat Grant.

WE HAVE NO MORE MINIMUM STANDARDS AND $25 IS NOT ENOUGH!!!

BUT WHAT CAN WE DO ABOUT IT?? HOW CAN WE MAKE THE CITY GIVE US MORE MONEY JUST WHEN THEY ARE TRYING TO GIVE US LESS???

Demonstrate at the Welfare Centers? That is not enough!

Demonstrate at City Hall? That is not enough!

Keep our children home from school? That is not enough!

We must do something to give us more money and at the same time force the city to negotiate with us.

WE THINK A RENT REVOLT IS THE ONLY WAY....

URGENT WORKSHOP MEETING OF ALL LEADERS

Wednesday, September 18

1-5 P.M.

235 East 49th Street

TO DISCUSS THE RENT REVOLT

IT'S $25 OR RENT REVOLT

CITYWIDE COORDINATING COMMITTEE OF WELFARE GROUPS
514 W. 126th St.
866-6216/17

FLAT GRANTS FOR REPLACEMENT OF CLOTHING AND FURNITURE LOST THROUGH FIRE OR DISASTER

These are the official flat grants for household furnishings and replacements that can be issued for the establishment of a home or because of a fire or other disaster.

The basis for the amounts is the number of people in the family:

one person --	$390.00
two people	465.00
three	500.00
four	605.00
five	695.00
six	785.00
seven	835.00
eight	985.00
nine	1025.00
ten	1120.00

and for each additional person above ten--$105.00 each. We are not prepared to give partial grants at this time. There is further discussion in relation to this. We would like the Senior Case Supervisor to approve these grants for the time being to make certain that the grant is only given for the purposes intended.

The following are the flat payments that can be issued to replace clothing lost because of fire or other disaster. This does not have to be discussed with the Home Economist. The amount is based upon the age of an individual:

16 and over -- $185.00 each
under 16 -- 145.00 each

We are not to replace the lost procedes of a cyclical grant. We can, of course, replace a lost check; however, we do not replace it on an emergency basis.

NOTE: Diaper allowance is to be put back on budget as item of special need.

Policy.

– rules in court
  – Obligation of department to serve client even if arrested.
    ie Shirley Williams · Sopperstein

→ possible affirmative action – re obligation to ~~serve~~ serve beyond 9-5. (Federal court) demonstrate hardships –

– Criminal cases.
  – introduction of sociological –
  – offers of proof.

→ Flat Grant – failure to hold public hearings first –
difference in treatment b/w welfare clients & average citizen
disrespectful ~~attitude~~ while other elements of American Society get large grants – serious fraud cases ie farming.

→ Poverty Report I.F. Stone detailed large grants to other segments of society – SNCC report

→ Adequacy Suit:
equal protect - NYC v. NY
- ie sit in or involvement at 250 Church St. 12
- right to be there

→ Criminal cases; if aggressive - will tie up ~~courts~~ calendars.

→ Major talks on criminal defense & explain to clients.

Joint Meeting between
Oct 2nd 7:30 MUST.

Dear

On Oct 2nd at 7:30 pm

Rent Revolt '68.

— Registration pledge to spent rent on furniture + clothing until

ⓐ Goldberg Lindsay - give special grants - for winter

ⓑ Landlords repair building

Central No. for information for each borough

Wanted Poster

Goldberg, Lindsay, Ginsberg

Membership Card.

Self adhering poster -

Join Rent Revolt -

Buntam - key is to resist evictions

— evicted families → centers. take possession of apartments being built

— Building captains, block meeting people not on welfare

— List of violations on building

— Resistance of Eviction workshops Wh 2 weeks

— Right to have furniture stored landlord pays to remove welfare pays to replace duplicate checks.

2 party checks – if tenant refuses
to sign – landlord won't
get.

FOR RELEASE:
SEPTEMBER 11, 1968
WEDNESDAY A.M.

FROM: JOINT LEGISLATIVE COMMITTEE
TO REVISE THE SOCIAL SERVICES LAW
270 Broadway, New York City
James P. Hackett - 488-3770

Room 505, State Capitol
Albany, New York
T. E. Mulligan - 472-3431

SENATOR WILLIAM E. ADAMS, CHAIRMAN

New York, New York - Public hearings on New York State's welfare law have produced evidence of serious defects in the existing welfare system, the Chairman of a legislative committee disclosed after 17 hours of testimony in Rochester, Buffalo and New York City.

Senator William E. Adams, (R-53rd Senate District, Erie-Genesee counties) Chairman of the Joint Legislative Committee to Revise the Social Services Law, issued the following statement today as he opened his second day of hearings in New York City:

"With some two-to-four more hearings to be held in the State, it is inappropriate to make conclusions or recommendations. However, our hearings so far have produced evidence of some serious defects in the existing system, which must be corrected. Many witnesses have told us:

1) There is a need for redefinition of the goals of welfare. The welfare system was born in an emergency and subsequently

- MORE -

PATCHED UP FROM TIME TO TIME TO MEET ENLARGED NEEDS WITHOUT REGARD TO ANY OVERALL PLAN.

2) TOO MUCH MONEY IS BEING SPENT IN ADMINISTRATION RATHER THAN IN PROVISION OF SERVICES.

3) CASEWORKERS ARE TIED UP WITH INVESTIGATIVE AND PAPER WORK 50-75 PER CENT OF THEIR TIME.

4) THERE IS APPARENTLY A REAL LACK OF COMMUNICATION BETWEEN THE CASEWORKER AND THE DEPENDENT FAMILY.

5) WELFARE FAMILIES, PRIMARILY MOTHERS WITH CHILDREN, ARE FRUSTRATED WITHOUT A HUSBAND AND FATHER. CASEWORKERS USUALLY ARE UNABLE TO HELP WITH FAMILY PROBLEMS. INADEQUATE SLUM HOUSING IS COUPLED TO NO HOPE FOR THE FUTURE.

6) THERE IS NO UNIFORMITY IN DISPENSING OF PUBLIC ASSISTANCE FUNDS, PARTICULARLY IN THE SPECIAL NEEDS CATEGORIES.

7) MEANS MUST BE FOUND TO RE-UNITE FATHERS WITH THEIR DEPENDENT FAMILIES AND GET THEM INTO SUPPORTIVE EMPLOYMENT.

8) SOME MEANINGFUL EFFORT MUST BE MADE TO CUT RED TAPE AND BRING TO A FOCUS ALL GOVERNMENTAL PROGRAMS IN A COORDINATED ATTACK ON POVERTY IN THIS COUNTRY--THIS APPLIES TO ALL THE UNDERLYING SOCIAL PROBLEMS ENCOUNTERED IN WELFARE: HOUSING, EDUCATION AND TRAINING, EMPLOYMENT, HEALTH AND FAMILY COUNSELLING.

- MORE -

IN CONCLUSION, WHILE WELFARE OR POVERTY IS A NATIONAL, NOT A STATE RESPONSIBILITY, THE CHALLENGE IS WITH US AT THE STATE AND LOCAL LEVEL. IT IS, THEREFORE, APPARENT THAT STATE GOVERNMENT MUST PRESS FOR FEDERAL ACTION WHICH WOULD:

A) PROVIDE A NATIONAL STANDARD OR FLOOR FOR INCOME MAINTENANCE SUPPORTED PRIMARILY BY FEDERAL FUNDS.

B) TRANSFER THE AGED, BLIND AND DISABLED CATEGORIES TO A FEDERAL PROGRAM FOR INCOME MAINTENANCE, I.E. SOCIAL SECURITY.

C) SEPARATE INCOME MAINTENANCE FROM PROVISION OF SOCIAL SERVICES.

IN THE INTERIM, THIS COMMITTEE SHOULD DETERMINE WHAT ACTIONS THE STATE CAN TAKE TO REVISE THE WELFARE STRUCTURE TO MEET THE FOREGOING IMMEDIATE DEMANDS.

FURTHER HEARINGS WILL NO DOUBT PRODUCE FURTHER FINDINGS AND GUIDE THE COMMITTEE IN ITS DELIBERATIONS.

IN THE MEANTIME, THE COMMITTEE EXPECTS TO BROADEN ITS OVERVIEW OF THE WELFARE STRUCTURE, BY ACTIVATING AN ADVISORY COMMITTEE WHICH WILL BE COMPRISED OF REPRESENTATIVES OF GOVERNMENT, PROFESSIONS, PRIVATE AND PUBLIC WELFARE ADMINISTRATORS, TAXPAYERS AND RECIPIENTS, BUSINESS AND LABOR AND OTHERS WHO SHARE A COMMITMENT TO BRING THE TOTAL WELFARE EFFORT TO BEAR ON THE GOALS OF TODAY, RATHER THAN THOSE OF A BY-GONE ERA STILL CARRIED IN OUR LAW.

CC: STATE BOARD OF SOCIAL WELFARE, STATE DEPARTMENT OF SOCIAL SERVICES, COUNTY SOCIAL SERVICES COMMISSIONERS

Perales

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Gordone

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3/13
769-5125

TESTIMONY

MORRISANIA LEGAL SERVICES PROGRAM
1260 Boston Road
Bronx, New York 10456

Presented and Prepared By

HAROLD R. WASHINGTON
ROBERT S. ASHER
RICHARD E. KWASNIK

September 9, 1968

We, at Morrisania Legal Services, join with other federally funded organizations in deploring the tactics of Senator William E. Adams, who in his press release characterized those dissatisfied with our present welfare system as "spoilers" and asked that they be investigated.

We wish to go on record as being dissatisfied with the current welfare system. As it is now constituted, it is dehumanizing, and does not follow the basic concepts of due process so fundamental to our American heritage.

We will attempt, in our report, to point out a few of the more glaring shortcomings in the system, in the hope that welfare recipients will be allowed to exercise the basic rights guaranteed to each citizen of this republic.

We, who represent welfare recipients at fair hearings, in the welfare centers and in their neighborhoods, have seen a small portion of the reality in which most welfare recipients exist. It is ugly; it is debilitating! In this hell a few recipients have decided to assert themselves as equal citizens with a right to an equal chance.

They are refusing to shuffle and give thanks for being permitted to exist at below a minimum subsistence level; they are refusing to shuffle and give thanks for seeing their children destroyed by this vicious "century-old" system.

It is time to shelve the sophistry that "so-called activists" and agitators are responsible for welfare recipients showing the sensibility and reasoning of normal human beings. And I respectfully submit that recipients are just as human as members of the New York State Legislature.

Senator Adams' press release reaffirms the proposition that lack of knowledge creates fear. The denial of minimal decency to any of our citizens frays the already damaged fabric of our society.

Although Morrisania Legal Services is a relatively new program, the majority of our staff attorneys have had extensive experience in the area of welfare rights. This experience was gained while working with other, pre-existing legal services programs.

In July, 1967, attorneys from legal services programs in the metropolitan area testified before the State Board of Social Services regarding necessary changes in the welfare fair hearings procedures and rules. It was pointed out at that time that the procedures utilized generally did not meet legal and constitutional requirements.

As a result of the July, 1967 hearings, certain recommendations made by the attorneys were adopted by the State Board, in theory, if not in fact.

The fact remains that many of the procedures and practices existent within the State Department of Social Services do not go to advancing the Legislative mandate embodied in Section 131 of the Social Services Law: "... to provide adequately for those unable to maintain themselves."

It must be kept in mind that in order to effectively prosecute one's rights, one must be apprised of such rights. Each local welfare department must advise each applicant of his rights to assistance and his rights to appeal and fair hearing in the event of denial of such assistance. Section 355.2 of the State Social Services Regulations requires that the local agency furnish informational booklets to applicants and recipients advising them of their rights and obligations. The New York City Department of Social Services has failed to furnish such booklets since early 1966.

Only under the most fortuitous circumstances will an applicant, who is not affiliated with a welfare rights group, come by information concerning his rights.

Caseworker I have spoken to generally have no idea of applicants' rights or the fact that there had ever been a "rights pamphlet."

FAIR HEARINGS

Of all the factors which render fair hearings ineffective in redressing recipients' wrongs, the most blatant is the fact that the fair hearing site is basically inacessible to the majority of recipients. Fair hearings are now conducted at 117 Liberty Street, in downtown Manhattan. They were held at 270 Broadway, until the early part of this year.

Pursuant to Board Rule 84.7, "the hearing shall be held at a time and place convenient to the parties as far as practicable...." Realizing that "practicable" is a "weasel" word, I respectfully submit that 117 Liberty Street is not a "place convenient to the parties."

Recipients from the Bronx, Brooklyn, Queens, Staten Island and Upper Manhattan generally have to travel over an hour on public transportation to reach the fair hearing location. The Notice of Fair Hearing, although printed in English and Spanish, gives no travel directions for reaching 117 Liberty Street.

117 Liberty Street is also located in the heart of a section which is undergoing constant demolition and reconstruction. The quarters at 117 Liberty are cramped and poorly ventilated, so that the windows must be left open in order not to cause undue distress to the participants within. With the windows open, however, it is almost impossible to hear testimony due to the constant construction noises outside.

These factors, plus the grossly inadequate procedural defects, contribute to the ineffectiveness of fair hearings. Holding fair hearings at this grossly inconvenient location effectively discourages many recipients from pursuing their statutory rights to conclusion. This grossly inconvenient location is the main reason that more than one half of the fair hearings scheduled are never held.

In order to insure a "real" right to a fair hearing, and not merely an illusory one, I would suggest that the State Department of Social Services schedule fair hearings in the borough in which the recipient resides. I would further suggest that welfare hearing districts, roughly corresponding to the local school districts, be established in each borough, so that the fair hearing can be held at "a place convenient to the parties."

Board Rules regarding fair hearings are honored more often in the breach than in the observance.

Board Rule 84.6 states that: "The hearing shall be held promptly," and in no event shall it be scheduled more than thirty-three working days from the receipt of the request for hearing.

I have personal knowledge of recipients who requested fair hearings in March of this year and have not had the hearings scheduled yet. The remedy for such an individual's plight is, of course, an article 78 proceeding to compel the scheduling of the hearing. However, there is a certain obscenity in making indigents resort to judicial proceedings to enforce an administrative remedy guaranteed by the Social Security Act, the Federal Handbook of Public Assistance Administration, the State Social Services Law and the State Regulations.

Board Rule 84.8 indicates that written notice to the appellant shall contain:

1. date and place of hearing;

2. appellant's right to transportation and other costs;
3. name and address of hearing officer;
4. the issues to be raised;
5. the manner in which the hearing will be conducted;
6. the right of each party to be represented, testify and cross-examine; and
7. the fact that the time and place can be changed if it is inconvenient.

The actual notice conforms with only tow of these seven requirements.

The Notice of Fair Hearing sent to the applicant indicates that he "may be represented by an attorney or other representative." There is no positive statement, as set forth in Section 358.6 of the State Regulations, that the applicant be made aware of community legal services available for such representation. At the very least, the applicant should be made aware of the fact that the local department will be represented by an array of persons, including one or more attorneys, a case supervisor, the unit supervisor, the caseworker and sometimes a social worker.

Board Rule 84.10 states that: "The hearing shall be conducted by an impartial Hearing Officer." This rule is ~~either~~ an empty one, ~~or~~ a cruel hoax is being perpetrated upon fair hearing appellants:

These "impartial" Hearing Officers do not write the decisions for the cases that they have heard. The decisions are written by the Commissioner, or at least someone in the Commissioner's office. The decisions, of course, cannot be based upon any personal observance of demeanor or sincerity of testimony, so that the end result is that all questions of fact are resolved against the appellant, evidently based on the assumption that he has a greater proclivity for lying.

This system results in decisions which are generally steril, pro forma enunciations that the local agency has complied with all State Regulations. I have seen decisions which did not mention the main issue raised at the fair hearing.

This past winter, I requested and participated in a fair hearing held at the home of a seventy-eight year old woman who lived on the lower East Side. The woman had requested several items, including a bed and a pair of shoes. The caseworker had denied the requests, stating that there was no evidence of need. Upon observing the state of the woman's furniture and clothing, the case supervisor conceded that there was obviously a need for the items and directed that the caseworker grant them.

The hearing decision, signed by the Commissioner, indicated that the appellant had not established need for the items requested.

I would suggest that in order to obviate the possibility of future such perverse situations, that the hearing officers be designated referees to hear and decide. In this way recipients are assured of at least a modicum of due process, in that one who has had some contact with his case is the final arbiter.

ADEQUACY OF REGULAR AND SPECIAL GRANTS.

For at least two years, legal Services attorneys have been challenging the adequacy of both regular and special grant schedules. The schedules for the grants have never reflected the cost of living in the Metropolitan area.

The regular grant schedule is generally revised every April, to be effective the following July. There is no indication that surveys of any kind were made to determine whether or not the schedule of grants would reflect, or even approximate the cost of living.

Section 131 of the Social Services Law states:

> A principal consideration in determining the adequacy of assistance and care in each case shall be the sufficiency thereof for maintenance in accordance with standards of public health in the community with due regard for variations in cost from time to time and between localities.

The local agency's regular grant schedule, as approved by the State, would hardly seem to be in line with the statutory mandate.

H.R. 12080, the 1968 Amendments to the Social Security Act, contains one section which apparently will be beneficial to recipients. Section 402(a) has been amended to, "provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established."

The State Board has not taken any steps, that anyone is aware of, toward implementation of this Congressional mandate.

The Board has taken one greatly publicized step. That step abolished the special grant schedule and substituted a flat grant of $25.00 per person quarterly for special needs. As iniquitous as the special grant schedule was, with its ludicrous anachronisms, the $25.00 quarterly grant creates more problems than it resolves.

Putting aside for the moment the fact that the Commissioner promised public hearings before implementation of the flat grant, let us consider the concept of flat grants. The concept ties in with guaranteed minimum incomes and family allowances as a matter of right, and not as charity. Any opposition to the quarterly grant, as announced by the State Department, goes to the inadequacy of it and not to the concept.

The Commissioner does not indicate whether or not each recipient will be brought up to any minimum standard before the flat grant is imposed. Those of us who have had extensive dealings with the local Department of Social Services know that it is the rare client who is brought up to minimum standard when his case is accepted.

Conceding, arguendo, that the flat grant of $25.00 quarterly might be beneficial to recipients, it cannot be gainsaid that such a grant will be meaningful and effective only if all recipients are first brought up to some minimum standard.

Inextricably tied to the question of regular and special grants is the matter of emergency assistance. The emergency assistance service maintained in the local Welfare Centers is totally inadequate. If a recipient is unable to get to his Welfare Center before 11:00 a.m., he is refused assistance and told to return the next day, no matter how dire the emergency may be.

Part IV, Section 2400 of the Handbook of Public Assistance Administration states that:

> "Agency policies that present obstacles to making application, such as requiring the application to be made in person or at the agency's office, requiring the presentation of proof of one or more eligibility conditions, or requiring conclusive information about the eligibility of the applicant as a condition to accepting the application, are inconsistent with the federal requirements that applicants be accepted without delay."

The policy of the local Welfare Centers, in refusing emergency service after a certain hour, is inconsistent with federal procedure and State Law and causes untold hardship upon the recipient and his family. The rule appears to be inflexible and supported by intake supervisors and Center administrators alike.

In light of the penalty provisions in the State Law directed toward recipients who abuse the system, I see nothing incongruent with penalty provisions in the State Law directed toward officials who flout federal, state and even local laws and procedures.

This would give intake supervisors cause to hesitate before telling a client with a legitimate emergency situation to return the next day.

To talk of recipients' rights without the additional safeguards mentioned, is to speak of rights in a vacuum.

We fully endorse the proposed bills submitted by the Center on Social Welfare Policy & Law. There is no basic variance between anything that I have said and the proposals presented by the Columbia Center. These proposals would lend efficacy to the fair hearing process.

I would further point out that among the provisions offered, several are restatements of the law now in effect. One instance of this is the section designated 2.2 in the proposed fair hearing bill. This section requires the local agency to give the recipient a written statement specifying reasons for any reduction or termination of assistance. Similar provisions are now found at Section 2300(f) of the Federal Handbook of Public Assistance Administration and Section 355.4(b) of the New York State Social Services Regulations. Notwithstanding these State and Federal regulations, the local agency continues to ignore the mandates.

It has been our experience that notification of the reason for change or termination of grant is rarely given. If there are reasons for the reduction in grant, the recipient is generally left ignorant of those reasons.

I have seen situations where grants have been reduced for clearly erroneous reasons. Recently, a client receiving supplementary assistance had her grant reduced because the caseworker "thought" that the client had received an increase in Social Security benefits. I presented the caseworker and a case supervisor with evidence indicating that there had been no increase in Social Security benefits. This evidence, furnished by the Social Security Administration, was ignored.

The grant was not restored until a formal complaint was made to the State Department of Social Services and a fair hearing requested. Needless to say the client never received written notice of the reason for the reduction.

It is most frustrating to recall that legal services attorneys testified before the State Board last year and had several of their recommendations adopted as Rules and Regulations. Now we find that these same Rules and Regulations are being ignored by the State and local agencies.

Part IV, Section 2200(a) of the Federal Handbook of Public Assistance Administration provides that:

> A State plan must provide that: the policies
> and procedures... will respect the rights
> of individuals ... and will not result in
> practices that violate the individual's
> privacy or personal dignity, or harass him,
> or violate his constitutional rights.

It has been my observation that the local agency's practices generally amount to harassment, invasion of privacy and disdain for the recipient's personal dignity.

I submit that it is high time that there were sanctions imposed against caseworkers, supervisors and other department officials who in any way impinged upon the basic rights of any recipient.

It is high time that welfare recipients received more than mere "paper" rights.

In conclusion I would like to make one further recommendation As I stated earlier, approximately six months ago new fair hearing procedures were adopted by the New York Sate Department of Social Services. These procedures were to provide for fairer rules for the scheduling and conduct of fair hearings and provide for a maximum period of time in which fair hearing decisions must be rendered. I recommend that a penalty provision be included in the State Law to affect hearings not scheduled and held within the fixed periods of time, due to the fault of the State or local agencies. The issues presented in such hearings to be resolved in favor of the recipient. The reasoning underlying this is that there is truth in the adage that justice delayed is justice denied. By such a law the Department of Social Services will be forced to schedule fair hearings and grant a decision instead of ignoring the problem for six months to a year, hoping that it will go away.

GRAY
CALS

FLAT GRANT

DRAFT 10/7/68

POINT ONE

THE "SIMPLIFIED PAYMENT SYSTEM" PROJECT VIOLATES THE SOCIAL SECURITY ACT AND THE REGULATIONS MADE PURSUANT TO IT TO THE EXTENT THAT IT LOWERS THE AVERAGE LEVEL OF "SPECIAL NEEDS" BENEFITS

A. The new system violates the statutory requirement of statewideness.

Sections 2(a)(1), 402(a)(1), 1202(a)(1), 1402(a)(1), 1602(a)(1), of the Social Security Act, 42 U.S.C.§§302(a)(1), 602(a)(1), 1202(a)(1), 1352(a)(1), 1383(a)(1), require that a state plan for categorical assistance benefits must "provide that it shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them;..." As interpreted by the Department of Health, Education, and Welfare in its "Handbook on Public Assistance Administration," the statute requires that the plan "shall be in operation, through local offices, on a State-wide basis and provide for administration in accordance with standards that are mandatory and equitable throughout the State." Pt.II §4200(1) (1964).

> "The purpose of the requirements relating to State wide operation is to assure that the public assistance programs in which there is Federal financial participation, be in effect throughout the State;... that the benefits of the programs will equally available to all eligible persons; and that State policies, standards and methods will apply equally to persons in like situations wherever they may live." PT. II § 4300 (1964).

The flat grant system clearly conflicts with the requirement that "policies, standards, and methods... apply equally to persons in like situations wherever they may live" since New York City residents are treated differently from residents of other parts of New York State in two respects: (1) payments are made at a flat rate instead of in accordance with individual need, and (2) the average level of payment in New York City has been reduced from what it had been under the regulations.

D. *The Department of Health, Education, and Welfare has not granted a waiver of the requirement of statewideness with respect to the reduction in average special needs benefits.*

Under Section 1115 of the Social Security Act, 42 U.S.C. §1315, the Secretary may waive compliance with the requirements of 42 U.S.C. §§ 302, 602, 1202, 1352 and 1383 "[i]n the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives" of the categorical assistance programs.

On August 15, 1968, the New York Department of Social Services applied for a waiver of the requirement of statewideness under Section 1115 in connection with the flat grant project. Application, Demonstration Project, Appendix B. On August [illegible]th, the application was approved. Letter of Regional commissioner James Callison to Joseph Chesbro, Acting Commissioner, New York Department of Social Services, Appendix C. The letter of approval endorsed the "Simplified Payment System," but made no mention of the level at which the flat grant payments were to be set. Letter, Appendix C, *passim*. While the waiver of statewideness is proper with respect to the new administrative procedure, no waiver at all has been obtained for the reduction in the average level of benefits.

Neither can the necessary waiver be discovered by implication in the letter of approval. The letter recites the purposes of the project: "providing greater equity in distribution of benefits among the total case load," "creating a move cooperative and helpful working relationship between the recipient and the agency," "enhancing the clients' sense of dignity" and allowing "more effective use of the case workers' time and talents." Letter, Appendix C. but the reduction is not necessary to fulfill any of these purposes, and, in fact, it may be inimical to some of them. The proposal itself make clear that the average benefit level is not involved in the experiment. Proposal, Appendix A, at p3. ¶ Since the waiver is lacking, the reduction is invalid under the Social Security Act and the regulations of the Department of Health, Education, and Welfare.

C. The lowering of the average level of special needs benefits in New York City cannot be justified as an "experiment, pilot or demonstration project... likely to assist in promoting the objective [of categorical assistance]" under Section 1115 of the Social Security Act.

Even if the Department had attempted to waive the requirement of statewideness with respect to the reduction in average benefits the waiver would have been invalid since the reduction could not be reasonably related to any experiment"likely to to assist in promoting the objectives [of categorical assistance]." Section 1115 should not be interpreted to allow major reductions in substantive benefits, especially to geographically defined groups of welfare recipients within a state. I

The legislative history of Section 1115 makes clear that it was not intended to be used to reduce benefits. The Senate Report on the section, Senate Report No. 1589, June 14, 1962, states,

> "Projects to be initiated are expected to be selectively approved by the Department and to be those which are designed to improve the techniques of administering assistance and the related rehabilitative services under the assistance titles." 1962 U.S. Code Congressional and Administrative News 1943, 1961.

The small amount of money authorized by section 1115 is another significant indication that the pilot projects contemplated by the section, like the flat grant system itself, were to test administrative techniques rather than the level assistance to recipients, especially since the latter would raise serious constitutional questions. See Point II, _infra_.

POINT TWO

CAPITALS
SINGLE
SPACE

The flat grant system violates the equal protection clause to the extent that it lowers the average level of special needs benefits to residents of New York City.

A. The policy of the equal protection clause, as well as those of the applicable state and federal statutes, requires statewide uniformity in the distribution of welfare benefits.

The Supreme Court stated in Reynolds v Sims, 377 U.S. 533, 558 (1964) that "... the concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relationship to governmental action questioned. or challenged." In the area of public assistance this constitutional mandate is reinforced by both state and federal legislation. The New York Social Welfare Law repeatedly declares the purpose of establishing a statewide system of assistnace to operate in a uniform manner. Section 207 (old age), section 288 (the blind), section 300 (the disabled), section 343 (families with dependent children), section 363 (medical aid for needy persons). The federal Social Security Act, from which derive a high percentage of the funds distributed by the New York Department of Social Services, requires that states distribute assistance on a statewide basis. See pp._______ -- _______, Supra. ~~xxxxxxx~~

The flat grant system violates the general principle of uniformity for those similarly situated in that it gives unequal treatment to welfare clients living inside and outside New York City.

B. Ununiform treatment must be justified by its reasonable relationship to a legitimate state purpose.

"While a State has broad power when it comes to making classifications (Ferguson v. Skrupa, 372 U.SL 726, 732), it may not draw a line which constitutes an invidious discrimination against a particular class. See Skinner v. Oklahoma, 316 U.S. 535, 541-542. Though the test has been variously stated, the end result is whether the line drawn is a rational one. See Morey v. Doud, 354 U.S. 457, 465-466." Levy v. Louisiana, _______ U.S. ____, ____ (1968).

Although the Court has allowed some latitutde in the line drawing in social and economic matters, cf. Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955), the Court has been more restrictive when certain conditions are present. First, the Court has found that certain kinds of classifications, such as those based on race or economic status are "traditionally disfavored." Harper v. State Board of Elections, 383 U.S. 663 (1967). We submit that terrritorial classifications comes withing this category. Unjustified discrimination on the basis of homesite has already been struck down in several contexts. The numerous reapportionment cases have emphasized the unconstitutionality of granting a special benefit to the voters of certain areas within a state, despite the long tradition of guaranteeing representation to certin political units. See Reynolds v. Sims, supra, at 533-39. In Gray v. Sanders, 372 U.S. 368, 380 (1963), the Supreme Court said, "...there is no indication in the Constitution that homesite...affords a permissible basis for distinguishing between qualified voters within the state."

Again, in Reynolds v. Sims, supra, at 568, the Court noted, "a citizen, a qualified voter is no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause...The Equal Protection Clause demands no less than equal legislative representation for all citizens, of all places as well as of all races."

In the area of education,

> "It is now clearly settled that once the State undertakes the function of providing education to its citizens it cannot arbitrarily deny such education to citizens in one area of the state while continuing to make public education available to citizens in ~~one area of the State while continuing to make public education available to its citizens in~~ other areas." Lee v. Macon County Board of Education, 231 F. Supp 43, 754 (1964).

In the leading Supreme Court case, Griffin v. Board of Education of Prince Edward County, 377 U.S. 218 (1964), the Court held that the defendants could not close their local schools while those in the rest of the state remained open in order to avoid desegregation. In two other cases three-judge Federal district courts have made it clear that the closing of some schools to avoid integration vichtes equal protection not only because of the racial motivation, but also because of discrimination aga[illegible] both white and black children in the affected district on [illegible] basis of homesite. In Hall St. Helena Parish School Board, 19 F Supp. 651 (E.D. 1961), the court said,

> The statute [requiring the closing] violates the equal profection clause on two counts. Most immediately it is a transparent artifice to deny the plaintiffs their declared constitutional right to attend desegregated public schools. More generally the Act is assailable because its application in one parish, while the state provides public schools elsewhere, would unfairly discriminate against the residents of that parish, irrespective of race. 197 Supp. at 651.

In James v. Almond , 170 F. Supp. 331 (E.D. Va. 1959), the court noted that the

> "discrimination complained of here is the denial of the right of white children to attend public schools which are closed by action of the Governor pursuant to an unconstitutional law... while other white children living in the same state, and within the same political subdivision, are enjoying the educational opportunities afforded them at the expense of all taxpayers, including the parents of the white children locked out of the six schools. We need hardly discuss the factor of race to arrive at the conclusion that is not equal protection of the laws." 170 F. Supp. at 339.

Welfare recipients as much as voters and school children must have the right not to be discriminated against on account of their homesites. Althought it has often been argued that public benefits are gratuities which may be distributed in whatever way and by whatever methods governments find desirable, this view has now been rejected decisively by the Supreme Court. See Sherbert v. Verner, 374 U.S. 398, 404-05, n. 6 (1963) See also Reich, The New Property, 73 Yale L.J. 733, 779-81 (1964); Note, unconstitutional conditions, 73 Harv. L. Rev. 1595 (1960).

In fact, the statutory right to welfare, like the statutory right to an education, see Brown v. Board of Eduaction, 347 U.S. 483, 493 (1954), is fundamental to the individual's ability to function as a member of our society and must be considered a "basic civil right" in the protection of which the Supreme Court has always been "extremely sensitive." Levy v. Louisiana, supra, at ______. Both federal and state welfare legislation implicitly recognize that a person needs a minimum of income or property to exercise his other civil rights and liberties and to fulfil his civic duties. See Snell v. Wyman, 281 F. Supp. 853, 869-73 (Kaufmann, J., dissenting) (S.D.N.Y.1968); Reich, The New Property, 73 Yale L.J. 733, 771-74, 785(1964).

A final factor here is that the local administrative determination challenged is not due the special respect accorded legislative acts. See Williamson v. Lee Optical Co., supra. Rather the administrators involved here seek an exception to the explicit policy of uniformity adopted by both the federal and state legislatures.

Under this combination of circumstances, we submit that the constitutionality of the flat grant plan should be subject to particularly thorough scrutiny by the judiciary to protect the right to equal treatment of those who may be damaged in connection with an administrative experiment.

C. The reduction in the average level of special need payments is unrelated to any purpose of the flat grant project.

The plaintiffs recognize that an administrative experiment may be a legitimate state purpose, and that such a project inevitably involves different treatment of those residing in a dir different areas. But the experimental nature of the flat grant project cannot justify the reduction in the average level of payments, because, by the terms of the proposal itself, (at p. 3), the experiment is not dependent any such change. The reduction does not serve any of the purposes of the experiment. Although the ~~xx~~ proposal (at p. 2) speaks of seeking "a more equi~~x~~table distribution across the caseload of the funds for 'special needs'", this statement refers to distribution among New York City residents and has nothing to do with the problem under discussion here of the allocation between New York City as a whole and the rest of the state. The reduction of average payments is likewise at least irrelevant to the other stated purposes of the flat grant plan: recognizing the dignity of the welfare client, eliminating idosyncratic decision-making, and separating income maintenance from social service fuctions. See Proposal, P. 2.

The complete lack of reasonable relationahip between the flat grant experiment and the reduction inaverage benefits is pointed up by imagining that the lump sum payment had been set at ten dollars per family member per year instead of one hundred. Even at this rate the administrative experiment could go on but the violation of equal protection would be starkly apparent. Although the discriminatory element in the actual plan is less exaggerated, it is present nonetheless and just as unconstitutional under the principles of equal protection.

The purpose which is clearly served, intentionally or not, by the lowering of average benefits during the demonstration project is reducing the state welfare n budget. But while this may be a legitimate public purpose, it cannot be achieved constitutionally by putting the entire burden on City dwellers while residents of the rest of the state continue at their old levels.

The plaintiffs do not suggest that an exact parity of treatment must or can be achieved in situations like the present one. The introduction of the new administrative procedure requires the state and city departments of social welfare to make a reasonable estimate as to what level of flat grant will give the resident of New York City approximately the same average benefits as they would have received under the regulations. If judges should not require onehundred percent accuracy in such an estimate this is no reason to allow unbridled discretion and clearly unreasonable results. The courts have enforced standards of equality elsewhere, most notably, in the area of reapportionment, where despite dire warnings of inadministrability, courts are now succesfully turning the theory of "one man, one vote" into reality. See, e.g. *Reynolds v. Sims*, *supra*, at 577.

In a similar manner, the right to equal treatment of New York City welfare clients must be protected here.

DRAFT 10/8/68

POINT THREE

PLAINTIFFS NEED NOT EXHAUST ANY STATE ADMINISTRATIVE OR JUDICIAL OR FEDERAL ADMINISTRATIVE REMEDIES.

The Supreme Court has repeatedly stated in recent cases that the availability of a state remedy cannot bar constitutional adjudication in federal courts:

> "We yet like to believe that wherever the Federal courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum. Stapleton v. Mitchell, 60. F. Supp. 51,55;see McNeese v. Board of Education, 373 U.S. at 674, n.6. CP. Cohens v. Virginia, 6 Wheat. 264, 404." Zwickler v. Koota, 19 L.ed 2d, 444, 450 (1967).

See also Damico v. California, 19 L.ed. 2d 647 (1967); Monroe v. Pape, 365 U.S. 167 (1961).

Plaintiffs have no federal administrative remedy for the evil complained of and thus no need to exhaust. See, Note, Federal Judicial Review of State Welfare Practices, 67 Colum. L. Rev. 84, 102 (1967)

DRAFT 10/8/68

POINT FOUR

NO SPECIAL CIRCUMSTANCES PERMITTING ABSTENTION EXIST IN THIS CASE

"The doctrine of abstention... is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it." County of Allegheny v. Franch Mashuda Co., 360 U.S. 185, 188 (1959). See also Stapleton v. Mitchell, 60 F. Supp. 51,55 (D. Kan 1945), appeal dismissed per stipulation, 326 U.S. 690; Note, Federal Question Abstention-Justice Franfurter's Doctrine in an Activist Era, 80 Harv. L. Rev. 604, 622 (1967).

In the recent case of Zwickler v. Koota, supra, the Supreme Court reaffirmed the limitation on the application of abstention to three sets of "special circumstances;" (1) "susceptibility of a state statute to a construction by the state courts that would avoid or modify the constitutional question;" (2) "diversity" jurisdiction; and (3) "possible disruption disruption of complex state administrative processes." 19 L.ed. 2d at 450, 450 n.11. None of these "special circumstances" is present in this case.

First, there is no question here of the vagueness of the regulation challenged and thus no chance that the regulation would be interpreted by a state court so as to avoid a federal constitutional decision. The flat grant system as instituted is intentionally simple and unambiguous. See United States v.

Bureau of Revenue, 291 F 2d 677, 679 (10th Cir. 1961); Gray v. Johnson, 234 F. Supp. 743 (S.D.Miss. 1964).

Second, this is not a diversity case.

And third, federal judicial intervention here presents no danger of disrupting a complex state apparatus. In an important sense there is no separate state scheme with which federal action might interfere. The New York State Department of Social Services administers the assistance programs in accordance with the Social Security Act and the regulations of the Department of Health, Education and Welfare. See N.Y. Social Welfare Law §29 (1964). See also note, Federal Judicial Review of State Welfare Practices, *supra*, at 100. Compare Railroad Commission v. Pullman Co., 312 U.S. 496 (1941). Under these circumstances, the federal questions presented by this action can hardly be said to be "entanged in a skein of State law that must be untangled before the federal case can proceed." McNeese v. Board of Education, *supra*, at 674. See also Holmes v. New York City Housing Authority, decided July 18, 1968 (2d Cir.) (slip opinion at 3127).

In any event, the irreparable nature of the harm plaintiffs will suffer, see pp. ___ - ____, *infra*, unless an immediate federal decision is rendered makes abstention uncalled for here. See McNeese v. Board of Education; supra; Baggett v. Bullitt, 377 U.S. 360, 378-79 (1964); Holmes v. New York City Housing Authority, supra, at 3129; Note, Federal Judicial Review of State Welfare Practices, *supra*, at 100-01.

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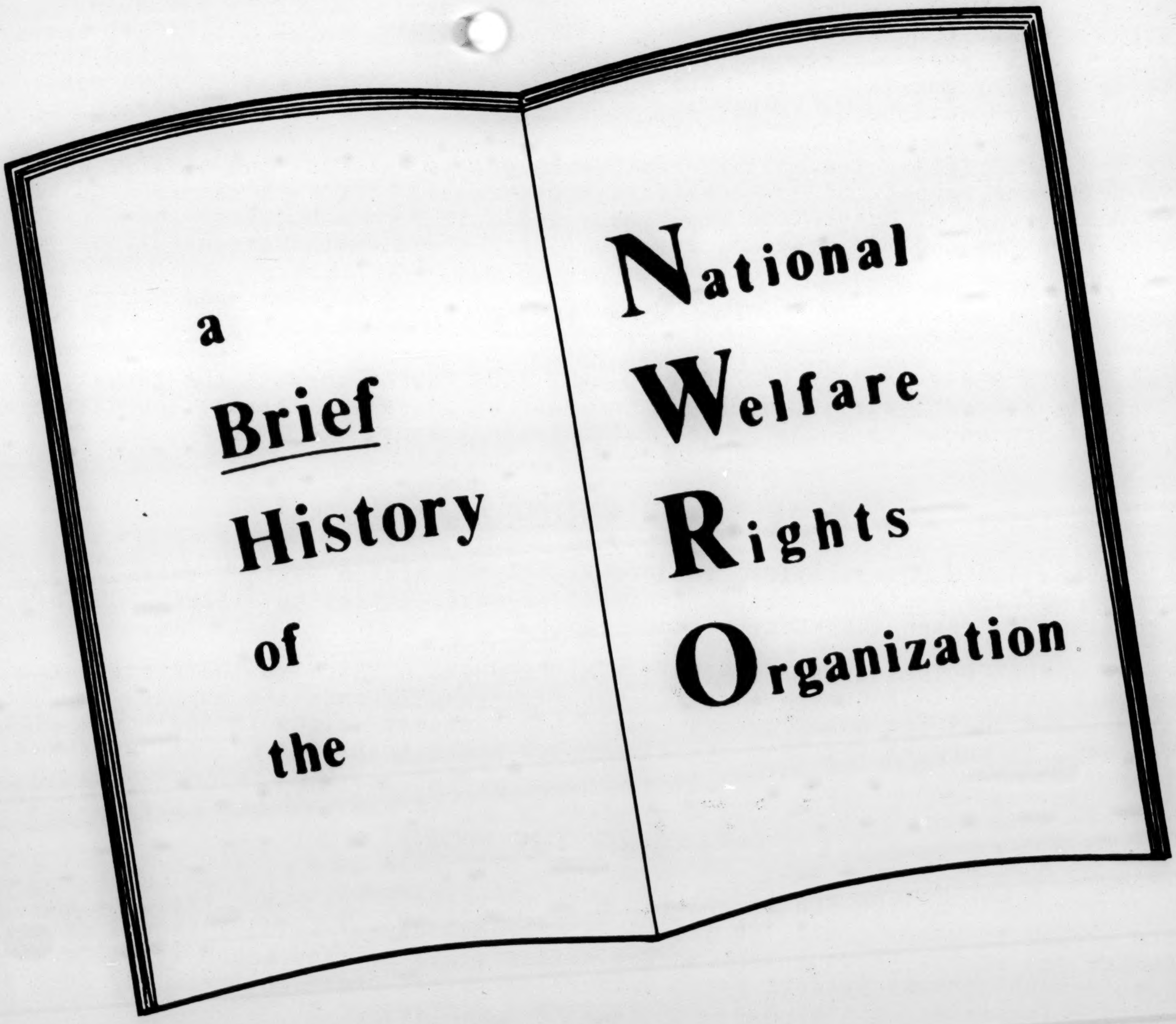

a Brief History of the National Welfare Rights Organization

Official Publication of THE NATIONAL WELFARE RIGHTS ORGANIZATION — Headquarters:
Poverty / Rights Action Center, 1762 Corcoran St., N.W. Washington, D.C. — (202) 462-[illegible]804

HE NATIONAL WELFARE RIGHTS ORGANIZATION

-A BRIEF HISTORY-

FROM THE BEGINNING

FOR OVER 30 YEARS OUR NATION'S PUBLIC WELFARE SYSTEM HAS DENIED RECIPIENTS enough money to live at even a minimum level of health and decency and has denied their rights to dignity and fair play. But not since the Great Depression have poor people organized nationwide to get and protect their legal and human rights.

DURING THE EARLY YEARS, few welfare recipients groups existed, and usually were only public relations puppets of local welfare departments. Early in the 1960's, however, independent groups of determined recipients began to form and demand their rights. But they were few and far between, and their births and death were hardly noticed.

NEW HOPE

BY 1966, A NEW SENSE OF HOPE HAD COME TO MANY POOR PEOPLE through the thrust of the civil rights movement and the noise of the "war on poverty". Across the nation welfare recipients began to organize and raise their voices.

SEEDS OF UNITED ACTION

IN MAY, 1966, A NEW ORGANIZATION, the Poverty/Rights Action Center, called together the leaders of welfare recipient groups from half-a-dozen cities to discuss how they might work together to strengthen their common cause.

CLEVELAND REPORTED THAT OHIO RECIPIENTS WERE PLANNING A MARCH to their state capitol tol protest Ohio's inadequate welfare. The march would reach the capitol on June 30. It was decided that the other groups should hold demonstrations in their own cities on that day, to support the Ohio recipients and protest their own local welfare problems.

SPREADING THE WORD

THE POVERTY/RIGHTS ACTION CENTER WAS ASKED TO COORDINATE the demonstrations and to find welfare groups in other cities to join in a national day of welfare rights demonstrations. The Center set up its Headquarters in the Nation's Capitol and began to build a coast-to-coast communications network among welfare recipient organizations. By June 30, welfare groups in sixteen cities had been mobilized for action.

THE BIRTH OF A MOVEMENT

ON JUNE 30th, 1966 AT 12:01 A.M., RECIPIENTS IN PITTSBURGH BEGAN the day with a vigil in front of the State Welfare Department. As the sun rose, demonstrations spread from Boston, Massachusetts to San Bernadino, California.

A NEW MOVEMENT HAD BEEN BORN -- THE NATIONAL WELFARE RIGHTS MOVEMENT.

LINKING TOGETHER

IN AUGUST, THE FIRST NATIONAL MEETING OF WELFARE RIGHTS GROUPS was called for Chicago. Over 100 recipients representing local welfare groups from 11 states gathered to lay the groundwork for a nationwide welfare rights movement.

A NATIONAL COORDINATING COMMITTEE OF WELFARE RIGHTS GROUPS WAS FORMED as a temporary body to shape the policy of the new movement. A national organizing campaign to strengthen local groups was launched.

THE MEETING ASKED THAT A WELFARE RIGHTS NEWSLETTER be started by the Poverty/Rights Action Center. By October, the Center had begun twice-monthly publication of the "National Welfare Leaders Newsletter."

EXPANDING THE NETWORK

AT THE FIRST MEETING OF THE NATIONAL COORDINATING COMMITTEE in December, plans were made for a second national meeting and the NCC's membership expanded to include representatives from additional states now having recipient organizations.

AT THE SECOND NATIONAL MEETING IN FEBRUARY, more than 350 recipients from 19 states assembled in Washington to exchange ideas, and participate in training workshops on welfare law and organization techniques. A national legislative program was developed, and presented to the U.S. Department of Health, Education and Welfare, and the Congress.

BUILDING MEMBERSHIP

IN APRIL THE N.C.C. ADOPTED A NATIONAL MEMBERSHIP PLAN to strengthen local organizations and build a strong membership base of dues-paying members. Direct negotiating sessions for specific changes in the welfare and food stamp programs were held with H.E.W. and the U.S. Department of Agriculture.

UNITING IN ACTION

IN JUNE, A SUMMER LONG ACTION-MEMBERSHIP CAMPAIGN was launched with thousands of welfare recipients across the nation filing applications for more money to meet their family's basic needs, and backing up their demands with fair hearing requests.

ON JUNE 30, 1967 MORE THAN 5000 RECIPIENTS IN 40 CITIES from Boston to Los Angeles, from Chicago to New Orleans, demonstrated under the banner of the National Welfare Rights Movement, demanding MORE MONEY NOW!

A NATIONAL ORGANIZATION

AUGUST 25 THE FIRST NATIONAL WELFARE RIGHTS CONVENTION was convened in Washington, D.C. One hundred and seventy eight locally elected delegates and alternates from 73 affiliated welfare recipient organizations in 44 cities and 21 states attended.

THE NATIONAL WELFARE RIGHTS ORGANIZATION WAS FORMED -- the first nationwide membership organization of poor people since the 1930's. A constitution was written, national officers elected, and a platform of goals adopted.

CONFRONTING THE CONGRESS

JOINED BY OVER 1,400 FELLOW RECIPIENTS, THE CONVENTION DELEGATES moved to Capitol Hill, Monday, August 28th, to confront the Congress with the gross injustices of the anti-welfare bill, H.R. 12080, passed by the House of Representatives. A mass meeting was held in the Senate Caucus Room while delegations of recipients individually contacted senators and congressmen. The 1600 NWRO membership then rallied in front of the Capitol and marched on H.E.W., encircling the block square building with a picket line protesting the government's failure to act on welfare injustices.

IN SEPTEMBER, THE NWRO OFFICERS AGAIN CONFRONTED CONGRESS on the anti-welfare bill with testimony before the Senate Finance Committee and a "wait-in" calling for an adequate hearing of welfare recipients views.

BUILDING THE PRESSURE

IN THE FALL, FAIR HEARING CAMPAIGNS BY NWRO GROUPS began to bring major pressure on welfare departments to halt abuses and grant recipients their full benefits under law.

ALL ACROSS THE NATION THE GROWING VOICES OF ORGANIZED RECIPIENTS IS BEGINNING TO BE FELT AND HEARD. DIGNITY! JUSTICE! DEMOCRACY! MORE MONEY NOW!

~~THE END~~

THE BEGINNING

– About the Poverty Rights Action Center –

THE POVERTY/RIGHTS ACTION CENTER IS A PRIVATE, INDEPENDENT GROUP, which is not an agency of government, nor an arm of any business, labor, or religious organization.

DEVELOPMENT OF THE NATIONAL WELFARE RIGHTS MOVEMENT has been the prime undertaking of the Center and most of its energies and resources have been dovoted to this program. The Center serves as the NWRO National Headquarters and staff.

THE CENTER'S STAFF CONSISTS OF SIX full-time people and a contingent of volunteers. It is headed by Dr. George A. Wiley, who, prior to setting up the Center in May 1966, served as Associate National Director of CORE and was formerly Associate Professor of Chemistry at Syracuse University.

THE OPERATING BUDGET OF THE CENTER is about $5,000 per month, and is raised on a month-to-month basis. The Center's income is raised from gifts of private individuals, NWRO memberships and dues, foundation grants, and subscriptions to the National Welfare Leaders Newsletter.

Giving Reality to the Promise of Job Equality

Joseph B. Robison*

One of the more striking features of the current civil rights revolution is a change in the nature of the demands being made by the proponents of full equality. This change has given rise to some novel and even difficult legal questions. One of these questions is dealt with here: What should, and what can, legally, be done to undo the effects of past discrimination -- effects that make it difficult if not impossible to achieve equality now? For purposes of convenience and clarity, this paper is limited to the area of employment.

Let us pose a typical case. In an industry that has operated for decades under a closed shop, the contracting union has consistently limited the size of its membership in order to protect the jobs of those already employed. In addition, it has rigidly excluded non-whites. The result is a lily-white work force. Today, a decade or two after the local state fair employment law was passed, Negroes demand an end to this situation. The employers deny all responsibility, attributing the selection of employees to the union. The union denies discriminating, at least since it became illegal to do so.

Under pressure from protesting civil rights groups and from government anti-bias agencies, both union and employer agree to adhere strictly to a non-discriminatory policy. However, that concession, by itself, achieves little or nothing. It means only that Negro applicants may now apply for employment and union membership and their applications will be passed on without regard to race. The applicant may still be rejected under a "non-discriminatory" union rule limiting applications to relatives of members. Even if that is not done, he will find himself at the end of a long list of prior applicants, forced to wait months or years for acceptance. And if this handicap is also waived, he still has the disadvantage of lack of training in the industry due to the years of exclusion and other disadvantages.

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* Member of the New York Bar. This paper was delivered at a conference sponsored by the Congress of Racial Equality, "The Changing Role of the Lawyer in an Era of Non-Violent Action," held in New York City, January 31 to February 2, 1964.

Use of Existing Fair Employment Laws

Common sense dictates that every effort be made to get the most out of existing laws, whether or not we consider them less than perfect. Thus it has often been urged that we could do much more to stimulate a larger flow of applicants from the non-white community, to encourage the filing of more complaints with the anti-bias agencies and to put pressure on the agencies to improve their procedures and generally to take a more vigorous attitude toward enforcement. However, what we are concerned with here is what we can do as lawyers, as distinct from our role as citizens. I would like to suggest one general approach under the laws as they stand before turning to the possibility of seeking a basic change of doctrine.

We should take the position that employers and unions have an obligation not only to stop discriminating but also to act affirmatively to undo the effects of past discrimination. With an imaginative attitude towards remedial procedures, we can strengthen the force of our demands for corrective action.

Anyone familiar with the practical realities of the employment market knows that the effects of discrimination are not automatically eliminated merely by ending the overt practice. Because of skills and seniority built up by the in-group during the earlier period, the excluded group continues to be at so great a disadvantage that it does not pay them to try to break in. Thus, an industry may stay all-white for decades after the formal barriers against Negroes have been dropped. That being so, effective enforcement of the fair employment law requires that a fresh start be made.

To accomplish this, a much more vigorous approach must be taken by state agencies, as well as those representing complainants, toward the appropriate remedy for illegal conduct. It is not enough to direct cessation of discrimination and assurances for the future. The results of past discrimination, no matter how long continued, must be undone.1/

In other areas, the courts have frequently recognized the power to undo past conduct that has a continuing effect upon the situation before them. Indeed, they do not hesitate, in such cases, to require or forbid, for remedial purposes, a course of conduct that would not be required or forbidden by direct operation of the law.

Practice in Other Areas

In Guinn v. United States, 238 U. S. 347 (1915), the Supreme Court considered an Oklahoma statute requiring literacy tests for all voters but providing an exemption for persons eligible to vote on January 1, 1866 and all lineal descendants of such persons. On that date, of course, Negroes were barred from voting. The bar was valid because the Fifteenth Amendment had not yet been adopted. The Court nevertheless held the statute unconstitutional. It found that the statute brought the standard of race into the voting process "since it is based purely upon a period of time before the enactment of the Fifteenth Amendment and makes that period the controlling and dominant test of the right of suffrage" (at 364-5). It was enough that the right to vote was affected by race, even though the discrimination which had that effect had occurred a half century earlier and had been legal at that time.

1/ The conservative approach of the state agencies today is typified by their procedure in simple cases of refusal to hire. The usual order requires the employer to consider the wrongly rejected applicant for the next vacancy. There is no reason, or at least no legal reason, why the employer should not be required to give the job to the complainant, dismissing if necessary the person hired in his stead. This is standard operating procedure for the National Labor Relations Board not only in the case of discriminatory discharges but also in the case of discriminatory refusals to hire. See Phelps Dodge Corp. v. N.L.R.B., 313 U. S. 177, 187-8 (1941). It has made no difference that this works substantial hardship on innocent parties.

After the National Labor Relations Act was adopted in 1935, the Labor Board frequently found situations in which the effects of past practices had to be undone. One typical fact situation showed a company union established by the employer prior to 1935. Employer support continued until the NLRA was held constitutional in 1937. Thereafter, employer support was reduced or terminated. Subsequently, a new union was started by the leaders of the old one but without employer assistance. In such cases, the Board held that the employer could not deal with the new union, even though it was established by legal procedures, because the continuing effects of the past practices had not been eliminated.

The courts upheld the Board in this matter without reservation. Thus, they accepted the theory that the Board could properly consider events prior to the effective date of the Act. See, e.g., N.L.R.B. v. Newport News Co., 308 U. S. 241 (1939); Western Union Tel. Co. v. N.L.R.B., 113 F. 2d 992, 994 (C.A. 2, 1940). They held that the Labor Board could require "disestablishment" of unions created by employers even though all employer support had been withdrawn. This was viewed as "a means of eradicating the effects of past unfair labor practices" (American Enka Corp. v. N.L.R.B., 119 F. 2d 60, 63 (C.A. 4, 1941)), thereby "wiping the slate clean and affording the employees an opportunity to start afresh...." Newport News case, supra, 308 U. S. at 250. See also N.L.R.B. v. Southern Bell T. & T. Co., 319 U. S. 50 (1943). The same considerations applied even where a new union had been formed to supplant the organization that had received employer support. N.L.R.B. v. Youngstown Mines Corp., 123 F. 2d 178 (C.A. 8, 1941); Sperry Gyroscope Co. v. N.L.R.B., 129 F. 2d 922 (C.A. 2, 1942), N.L.R.B. v. Rath Packing Co., 130 F. 2d 540 (C.A. 8, 1942).

Anti-trust law likewise suggests useful analogies. A number of the relevant principles were set forth and applied in the Supreme Court's two decisions in United States v. E. I. du Pont, 353 U. S. 586 (1957) and 366 U. S. 316 (1961). In that case, the Court traced the situation requiring correction back almost 50 years (353 U. S. at 598-599). In particular, it found that the du Pont company's acquisition of a substantial part of the General Motors stock in 1917 was subject to the drastic remedy of divestitute despite the absence of evidence of abuse of that position for 30 years. It expressly rejected the trial court's conclusion that "30 years of nonrestraint negated 'any reasonable probability of such restraint' at the time of the suit" (at 598). It stressed that the courts had wide discretion in the shaping of remedial decrees (366 U. S. at 322). In the second decision, the court below had held that a proposed order that would have effectively undone the effects of the past monopolistic practices should be rejected because of the tax burden it would place on a number of shareholders. The Court reversed this ruling, saying (366 U. S. at 326): "But courts are authorized, indeed required, to decree relief effective to redress the violations, whatever the adverse effect of such a decree on private interests."

Parallels can also be found in patent law, where effective elimination of the results of past misconduct is a matter of judicial concern. In B. B. Chemical Co. v. Ellis, 314 U. S. 495 (1942), the Supreme Court barred enforcement of a patent because the patentee had used it to foster an illegal monopoly. When the patentee urged that it had halted its illegal practices, the Court said (at 498): "It will be appropriate to consider petitioner's right to relief when it is able to show that it has fully abandoned its present method of restraining competition in the sale of unpatented articles and that the consequences of those practices have been fully dissipated." (Emphasis supplied)

Finally, this approach has been taken to a limited extent in the administration of fair employment laws. Shortly after the enactment of the New York State law, the State Commission considered the case of a large utility company that had an all-white work force and yet was not apparently engaged in any form of overt discrimination. The Commission reported the case as follows (State Comm'n Against Discrimination, Annual Report 1946, p. 23):

> After meetings with one public utility, the Brooklyn Borough Gas Company, it was discovered that discrimination in the hiring practices of the concern arose from the fact that when the company was first organized it had a homogeneous employee group, and throughout the years had added new employees by recruitment through its current employees.
>
> At the suggestion of the Commission, the company agreed to take affirmative action, in providing equality of employment opportunity, by written and oral instructions to all department heads that all applicants for work would be considered on the basis of their job skills and aptitudes, and would be hired through a central personnel office of the company. 2/

Making a Fresh Start

These authorities establish three main points of importance here: (1) that there is an obligation to overcome the present effects of past discrimination; (2) that this obligation exists even if the discrimination was not illegal at the time it was committed; and (3) that the effects may and should be overcome despite hardship to innocent parties.

It follows that far more vigorous action may be taken than has been in the past to correct biased situations. 3/ In particular, there is hardly any

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2/ It should be noted that, in this case, it was not shown that there had been discrimination even before the effective date of the Act.

3/ Some of the procedures frequently proposed present no substantial legal problems. These include the various steps designed to increase recruiting in Negro areas, such as advertising in Negro newspapers, seeking new employees among graduates of predominantly Negro schools and use of the state employment services and other employment agencies known to have a high proportion of non-white workers. Such provisions have been required in orders issued by state anti-discrimination agencies, as measures designed to correct skewed hiring policies. They present legal issues only when they are accompanied by demands that recruiting be restricted or that it give preference to such sources.

question that existing seniority rosters and waiting lists -- for jobs, union membership or training programs -- can be nullified. If they were built up at a time when discrimination was in effect, they are tainted with illegality and cannot be relied on.

It is well settled that no employee has a vested interest in accumulated seniority. Seniority rights exist solely under union contracts. "The employer who operates an unorganized plant is free to ignore relative length of service in laying off, recalling, promoting, or assigning his employees, and he usually does so." Aaron, "Reflections on the Legal Nature and Enforceability of Seniority Rights," 75 Harv. L. Rev. 1532, 1534 (1962). Even where seniority rights have been established by union contract, they "may be modified or eliminated by agreement of the union and the employer so long as they act in good faith, and this change may be effected without the consent -- indeed, against the wishes -- of the individual employee." Id. at 1533-4. See also Ford Motor Co. v. Huffman, 345 U. S. 330 (1953).

The requirement that the union exercise "good faith and honesty of purpose" (Ford Motor case, supra, 345 U. S. at 338) need not deter us here. Measures taken to correct illegal discrimination cannot be regarded as being in bad faith.

It follows that seniority rights can never be a legal barrier to remedial action. They are, of course, a potent practical consideration. No union will abandon them willingly. No administrative agency will lightly order their abandonment. But that need not stay us. We may call for abrogation of biased seniority rosters at any time, even during the term of a collective bargaining agreement.

Restrictive Membership Practices

Corrective measures need not be limited to abrogation of waiting lists and seniority rosters. Thus, a report recently issued by the New York City

Commission on Human Rights[4] mentions a number of other practices that contribute to maintaining discrimination, all of which could be curbed by appropriate orders. Perhaps the most important of these are membership requirements that either limit new members to relatives of past members or require applicants to obtain sponsorship by past members. Such requirements plainly tend to preserve the original biased structure, thus bringing the situation squarely within the Grandfather Clause concept.[5] Employers can therefore be forbidden to enter into closed shop, union shop or hiring hall arrangements with unions that have not corrected the results of discriminatory admission policies.

It seems equally clear that those who conduct an apprenticeship program can be prevented from giving such unions any power over admission policies. Waiting lists for such programs, established in the past under union control, should be appropriately revised.

A direct attack could also be made on union membership provisions under state fair employment laws. The New York law, for example, makes it unlawful for a union "because of the ... race ... of any individual, to exclude ... from its membership such individual ..." (Executive Law, Sec. 296-1(b)). I believe that a violation of this section can be shown by evidence that (1) the union had a whites-only policy in the past and (2) since that time it has limited its membership by a father-son or sponsorship rule. Indeed, it may be sufficient to show only that no affirmative steps have been taken to undo the effects of the original practice.

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[4] Interim report to the Mayor from the City Commission on Human Rights of New York on its Inquiry into Charges of Racial Bias in the City's Building and Construction Industry, December 13, 1963.

[5] The City Commission said in its report, at page 7:

> Historically, it was the practice in the building trades to include "for white only" clauses in union constitutions and by-laws. Although such clauses are absent from union constitutions today (as a direct result of city and state laws and federal regulations) their racial discriminatory effects are still felt, notably in operation of the "father-son" and sponsorship clauses. (Emphasis supplied)

There is another approach that might be used in the case of unions that limit their total membership primarily for economic reasons. Anti-bias laws do not of themselves prohibit this practice. Where, however, such a union's membership is structured by discrimination, it can be required to open its rolls at least to the extent necessary to undo the bias. Thus, an order could be issued giving the union the choice between abandoning its limited membership policies or making room for enough new members to correct the effects of past discrimination against non-whites.

In filling the resultant vacancies, past waiting lists would obviously have to be ignored. How much more than this could we demand to ensure that the filling of the vacancies actually corrected the past bias? Certainly, any non-white who had actually applied at an earlier date and had been rejected would be entitled to preference.[6] However, few if any such courageous persons would normally be found. Since we are assuming a union policy that effectively discouraged non-white applicants in the past, can it not be argued that any non-whites who can show that they were qualified to apply at an earlier date are also entitled to preference? This ought at least to be considered. One might go further and argue that, since the opening up of the list is designed solely to correct past exclusion of non-whites, only non-whites should be accepted for the new vacancies. The force of such an argument might depend, in part at least, on the resulution of the fundamental issue on "preferences," discussed below.

The Problem of Proof

What has been said above assumes the existence of discrimination, at least in the traceable past. As usual, however, we must also consider whether

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[6] From its earliest days, the Labor Board asserted the power to require employers to establish seniority lists giving preference to wrongfully discharged employees. In Re Segall-Maigen, Inc., 1 N.L.R.B. 749 (1936).

rely on direct action rather
is entirely permissible
becomes whether

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and how our case can be established. Frequently, direct evidence of discrimination is lacking and our main reliance must be placed on the simple fact that Negroes do not appear in the work force or among the union membership. While this is at least *prima facie* evidence of discrimination, it is not conclusive. The employer or union can always claim and sometimes prove that there have been no non-white applicants.

This argument is sufficiently overcome if a showing can be made that the employer or the union has had a known policy of discrimination. Such a policy, of course, makes application by non-whites fruitless.

The defense can also be countered by proof of past discrimination,[7] together with evidence of restrictive practices, such as father-son rules or sponsorship requirements, that tend to perpetuate past discrimination. Thus, practices that tend to maintain a biased status quo are relevant both to proof of discrimination and to determining the appropriate remedy therefor.

It may not even be necessary to prove continuing restrictive practices. We should seek to establish the concept that the burden is on the former discriminator to show "that the consequences ... have been fully dissipated." *B. B. Chemical* case, *supra*, 314 U. S. at 498. He must show that he has succeeded in "wiping the slate clean ..." *Newport News* case, *supra*, 308 U. S. at 250. Affirmatively, we may show that no efforts have been made either to announce abandonment of discrimination or to correct it by using new sources of recruitment for employees or members.

Often, in practice, hard and fast proof is not needed because the matter does not go into formal proceedings. In many cases, the civil rights forces rely on direct action rather than the administrative or judicial process. That is entirely permissible as long as our demands are legal.[8] Thus, the question becomes whether the demands we make can be complied with legally.

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[7] Leads to evidence of union discrimination continuing into relatively recent years can be found in such studies as the New York City Commission Report, *supra*, note 4, as well as *Reports on Apprenticeship by the Advisory Committees to the United States Commission on Civil Rights*, published by the Civil Rights Commission, January 1964, and *Apprentices, Skilled Craftsmen and the Negro: An Analysis*, published by the New York State Commission Against Discrimination, 1960.

In the typical case, our side is morally certain that there have been discriminatory practices but is not sure whether they can be proved. The other side is troubled by a conscience about its past practices and is likewise not sure whether they can be proved. It is ready to take corrective steps but is not prepared to make any formal admission of misconduct. In such a situation, the Hughes doctrine would not apply to demands for corrective action based on allegations of past discrimination.

Thus, we may appropriately call for elimination of seniority rosters and opening up of union membership rolls and training programs whenever we are convinced that discrimination exists. At the same time, these demands can be granted by the employer or the union without making any formal admission of past misconduct. It is familiar practice under administrative statutes for persons to agree to the entry of a remedial order without admitting, and even while denying, the commission of statutory violations.

Unequal Preparation for the Job

The suggestions made up to now, however, cannot be relied on to combat the additional handicap of unequal preparation for the job -- the fact that the Negro's past exclusion from industry has deprived him of the training that is not only desirable but often necessary for the jobs that are worth fighting for. Indeed, the ability handicap may be even more deeply rooted. It may stem from the inferior education, poor health and other disadvantages under which the Negro worker has labored up to the time of his attempt to break out of the mold of discrimination.

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[8] There is no room here for a discussion of the perplexing question whether picketing and other direct action for an "illegal" objective is constitutionally protected. At present, the courts are likely to regard the Supreme Court's decision in Hughes v. Superior Court, 339 U. S. 460, 70 S. Ct. 718 (1950) as permitting the states to bar any demonstrations for objectives that can be regarded as illegal discrimination. Indeed, it must be remembered that, in that case, the Court upheld a state court injunction against picketing in support of quota hiring even though state law did not make such hiring illegal.

Many are not disposed to accept the customary answer, that skills must be acquired the hard way and all we can do now is to end the causes of inequality. Yet, any other approach requires some form of "preference," no matter what euphemism is used to disguise it. It requires that non-whites be hired (or selected for membership or training) on the basis of their race and in preference to white applicants of equal or better qualifications.

Quite aside from the purely practical questions as to the feasibility of preferences, there is grave doubt as to their legality. In fact, it is probably safe to say that they cannot be upheld without substantial revision of existing law.

Existing Law

A fundamental principle of civil rights law, established in the last few decades of successful litigation and legislation, is the concept of equal opportunity for the individual. It assumes that equality can be achieved by eliminating consideration of race, etc. so that every applicant for a job, a house or a hotel room is considered on his merits alone. Membership in a group is disregarded.

This concept has made itself felt quite strongly in the Supreme Court decisions of the last half-century giving ever increasing effectiveness to the constitutional guarantees of equality. Thus, in 1914, the Court considered an Oklahoma statute which in effect permitted railroads to confine their sleeping car facilities to whites on the theory that there was insufficient demand from Negroes to warrant separate arrangements. McCabe v. Atchison, T & S.F. R. Co., 235 U. S. 151. Although the Court dismissed the action for procedural reasons, it plainly indicated that the statute was invalid. It stressed that the constitutional right is not satisfied by consideration of groups, saying (at 161-2): "It is the individual who is entitled to the equal protection of the laws ..."

In Mitchell v. United States, 313 U. S. 80, 97 (1941), the Court reiterated this concept in a case involving the prohibition of discrimination in the Interstate Commerce Act. In Henderson v. United States, 339 U. S. 816 (1950), again under the I.C.C. Act, the Court said (at 824): "The right to be free from discrimination belongs, under § 3(1), to each particular person." Where a facility is available, "each such passenger is equally entitled to its facilities in accordance with reasonable regulations." Specifically, the Court said, " ... it is no answer to the particular passenger who is denied service at an unoccupied place in a dining car that, on the average, persons like him are served."

In Missouri ex rel. Gaines v. Canada, 305 U. S. 337 (1938), the Court struck down, under the Fourteenth Amendment, an arrangement whereby the state excluded Negroes from its publicly maintained law school but provided for instruction at the law school of a neighboring state. The Court said (at 351): " ... petitioner's right is a personal one. It was as an individual that he was entitled to the equal protection of the laws, ..."

The historic ruling in the Restrictive Covenant cases of 1948, Shelley v. Kraemer, 334 U. S. 1, was won because this concept was pushed to its ultimate point. The Court's decision rests on the all-out "color blind" theory -- that courts in enforcing contracts may not make the outcome depend on the color of the parties. It said (at 20-21) that it was "Because of the race or color of these petitioners" that they were "denied rights ... enjoyed ... by other citizens of different race or color." See also Banks v. Housing Authority, 120 Cal. App. 2d 213, 260 P. 2c 668 (1953).

The same concept of individual right is embedded in the anti-discrimination laws that became a prominent feature of the civil rights landscape as World War II was coming to a close. Thus, the first of these laws, adopted in New York in 1945 (Executive Law, Sec. 296(1)(a)), made it unlawful: "For an employer, because of the ... race ... of any individual, to refuse to hire ... such individual or to discriminate against such individual ..." Under this statute, and its parallels in other states, "merit employment" became a slogan undergirding enforcement, education and compliance -- a very potent slogan. Everyone was to be chosen solely on his merits, without regard to race, religion or national origin.

Coupled with this was the concept of "equal opportunity" -- to obtain a job, a home or an education. Artificial barriers were to be eliminated so as to give everyone the same chance, regardless of his ancestry.

Is "Merit Employment" Enough?

The present crisis is due in large part to the fact that we have found that the "merit" and "equal opportunity" formulas sometimes frustrate achievement of our ends. It is as though one of two men starting a mile race were required to carry a fifty-pound pack on his back. At the half-way point, the judges halt the proceedings and declare that both contestants are now to be given an "equal opportunity" to cross the line first -- from where they are at that point.

In this case there is a relatively simple solution. Put the pack on the other man's back. Applied to real life, however, that same solution runs counter to the basic concept that guilt is personal and that punishment may not be imposed without fault. In the typical employment situation described above, any step that favors the Negro applicant must injure some white applicant. The latter, however, was not responsible for the past discrimination. He is not at fault except in the sense that he is a member of a group that is benefitting from past evils. How do we resolve this conflict -- morally and legally?

The fundamental justice of the demand for equalization suggests that there must be an acceptable expression of it in constitutional and statutory terms.[9] As lawyers, we have an obligation to search for such an expression. In my opinion, however, it has not yet been formulated.

"Benign Discrimination"

The most plausible approach is the argument that the law does not prohibit all recognition of race but only that which results in inequality or segregation. Consequently, it is argued, actions based expressly on race are permissible if their intent or effect is to combat those evils. This theory has been used to justify "benign quotas" in housing as well as some of the plans to combat de facto segregation in Northern public schools.

Some support for this view can be found in the Supreme Court's 1963 decision in Goss v. Board of Educ. of Knoxville, 373 U. S. 683. The Court there invalidated a provision in a public school desegregation plan whereby any student assigned to a new school as a result of the plan could request and obtain reassignment to his old school if a majority of the pupils in the new school were of a different race. This was to be done, as the Court noted, "solely on the basis of his own race and the racial composition of the school ..." (373 U. S. at 684).

The Court analyzed the facts and found that the plan "lends itself to perpetuation of segregation" (at 686). It concluded its discussion of this point by saying: "We hold that the transfer plans promote discrimination and are therefore invalid" (at 688).

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[9] The issue can be raised either under the Constitution or under anti-bias statutes. If the problem were only statutory, it could be resolved by appropriate amendments. However, the constitutional limitations on discrimination in "state action" can be changed only by an amendment, which is practically unlikely, or a revised interpretation of the existing language. Furthermore, without such a revision, it is doubtful that statutory amendments permitting benign discrimination would be constitutional.

It can be argued that the Court cut down the Knoxville plan not because its operation depended upon the race of the individual applicant but because it promoted segregation. Yet, in the same opinion, the Court said flatly: "Classifications based on race for purposes of transfers between public schools, as here, violate the Equal Protection Clause..." (at 687). Moreover, while the Court may have relied on the segregating effect of the plan, it gave no indication that it would uphold a plan of "benign discrimination." The question is at least still open.

In deciding whether to urge revision of the existing view of the Equal Protection Clause, we must remember that the older formulation has been and continues to be a powerful weapon against bias. We must be sure that any change we propose does not surrender more ground that we might gain.

I am inclined to think that the proposed "benign discrimination" rule would do just that. It would allow discrimination if its intent or effect was to achieve equality or integration. Whether the test is "intent" or "effect," the rule would substitute a subjective for an objective test.

The present rule has won its great triumphs largely because it leaves courts, administrators and private individuals little room for maneuvering. Once it is shown that they have applied a racist standard, they have no defense.

The proposed subjective test would give the courts no such clear guide. Any employer charged with job bias, any real estate developer charged with exclusionary policies, any school official charged with segregation could claim that his aim had been to achieve integration. The burden would then be on us to prove the contrary. Neither juries nor trial court judges could be relied on to give us the benefit of their doubts.

The time may come when the grosser forms of discrimination have been so far reduced that we can forego blunt legal weapons for more "discriminating" instruments. I doubt that we are at that point now. I suggest that more can be done under existing law than has been done and that we should concentrate on that objective.

NEW YORK FLAT GRANT

Notes taken on meeting at New York Theological Seminary concerning the discussion of the proposed complaint.

Hulbert James reported that October 29th is the deadline sofar as he is concerned with the Flat Grant Case. He also reported at the sametime on the rent program and what the Metropolitan Fair Rent Committee (landlords) is doing; he referred to their four point program.

As to the proposed complaint, the new law requiring the raising of assistance grants goes into effect as of July 1, 1969. The States are supposed to have been preparing to put this into effect ever since January 1, 1968. The discussion centered around the fact that the Flat Grant program of New York City is a way of avoiding and circumventing this increase in assistance. It was further suggested that we beef-up the arguments concerning the nature of a demonstration project by tying in the requirement of increase of assistance with the decrease caused by the Flat Grant.

It was strongly urged that the allogations in the complaint go into much more detail as to the history:

a) Present grants are really inadequate

b) The cost of living in New York City is higher

c) As a result of the Flat Grant, New York City people are to be in an inferior position.

The recommendation was also made that it be specifically delineated that the Flat Grant is a political tactic to destroy the organized welfare movement. Picking New York City to make this so called "demonstration" and leaving the prior program in affect in the rest of the State is some proof of this. It was agreed that details of the fact and figures should be included.

It was pointed out that the city tried to institute this kind of program earlier, but the New York State budget director said it would need legislative approval. It was only after that the city went to HEW for approval as a demonstration project.

It was agreed that details of the success of the organized welfare movement with regards to special grants should be set forth and then to urge specifically that a demonstration project cannot be used to deny equal protection of the law.

Some discussion was held of how the figure of $100 was arrived at. Lee Albert said that he thought they had the information and would put it together. There was some question as to whether this figure was purely arbitrary or whether there was a particular rationale behind it.

It was pointed out that in the application the city made to Washington, nothing was said about cutting off pending requests for special grants and yet after approval of the demonstration project by HEW, this is what the city has done, it has refused to consider these requests.

It was agreed that the complaint should include a listing of the items that are omitted which were formerly available to welfare recipients. The $100 are suppose to meet all needs except certain types of emergencies, thus the Flat Grant programs should be described in some detail.

Of course, the complaint should spell out the various types of denial of equal protection of the law. The Act requires that a State plan be uniform. By calling this program a demonstration project, the uniformity is destroyed and they are now in effect, two State plans existing in New York. We should make strong allogations that the true and basic reason for the Flat Grant program in New York is to punish the organized welfare client by taking away his capacity under the law to obtain greater benefits. This is a kind of due process argument, not an equal protection argument.

Two major lines of research must be enjoyed in the first concerns section

1115. Are there any internal HEW memoranda which show how they interpret the term "demonstration" project. It was stated that Winiford Bell would be an appropriate person to discuss this with. A second aspect to this part of the research would be a catagorizing of all known demonstration projects to show how by the act of the department, its interpretation was much more limited than the broad program institute in New York.

The next major area of research needed immediately involved a statistical analysis. Reference was made to the statement of James Fogarty of the New York Community Council who made a budgetary analysis of the needs of the poor. Ed Sparer said he had information on this and would forward it.

Lee Albert said they would collect all the statistical information, and Rachlin agreed to get to work immediately on the editorial changes in the complaint and work with Lee to fit Lee's information into the complaint. In the request for relief, it was agreed to seek an injunction restraining the use of the new rules and to attempt to restore the rules in effect prior to the institution of the Flat Grant program.

A date was set for the next meeting of the lawyers involved on Friday, October 18th at 10:30 a.m. at the New York Theological Seminary building. Hulbert James would arrange for the particular room.

CR:jb

BEYOND THE FLAT GRANT

The inadequate flat grant is just one part of a rotting welfare system. If social workers and welfare clients want to change this system, protesting each additional insult as it comes along is busy work. Although it is harder to organize for long range goals, a series of senseless confrontations with the government cannot possibly win in the present political climate. If the welfare movement is to survive in an increasingly repressive society, it must recognize that welfare clients cannot afford to be isolated from the working population.

WHO ARE WE FIGHTING? The enemy of the poor is not just "white America," or some vague "Establishment." Our common enemy is the class of people who own and operate the economy of this country... big businessmen and financiers. They are the ones who are responsible for poverty and unemployment. It is their decisions which determine where investment goes: at home or abroad, for homes or for bombs. The only way to eliminate poverty is to invest the wealth of this country in creating more productive jobs, in producing more of the things that people need. Instead, investment now goes into war production and into pure speculation. The average wage-earning taxpayer has as little to say about this now as a welfare recipient does.

WHO PAYS? It is suicidal to keep attacking the Department of Welfare or City Hall without specifying who is to pay for necessary changes. This only plays into the hands of the government and big business, who have been very successful at convincing white working people that black people are a threat to them and that poor people just want more welfare paid for out of their taxes. Should we be surprised that Wallace is winning such wide support among white workers, most of them only one generation out of poverty themselves? Does this create any sort of political climate where welfare can be increased instead of cut back? The welfare movement cannot allow the government to push it into isolation and then destroy it.

JOBS AND INCOME NOW. The only solution is for the creation of more productive (not dead-end and menial) jobs. We must demand 1)jobs at an adequate wage for all who want to work, and 2) an adequate guaranteed income for those unable to work, such as mothers with young children. This should be paid for out of the only sector of the economy which can afford it -- business income, not wages.

If you are interested in meeting to work on such a program, please contact:

SDS Labor Committee
c/o Spannaus
Box 423, Planetarium Station
New York City 10024
877-7678

add
p 18
106

Proposed Insertion

(Top of page 3, before par. 1 on
that page)

III. A. Nature of Claim

1. That New York State and its subdivisions administer public assistance programs basically funded by the United States, and partly paid for by New York State and New York City.

2. That pursuant to New York State law August 15, 1968, recipients in New York City received a basic bi-monthly grant based upon a budget determined by New York City Department of Social Services based upon regulations fixed by the New York State Department of Social Services.

3. In addition to that bi-monthly basic grant, recipients of public assistance were entitled by law in New York State (   ) to grants for special needs in order to bring recipients up to a minimum standard of living or to replace items worn out such as furniture, etc., all being items not included in the basic bi-monthly grant.

4. As of August 15, 1968, for recipients residing in New York City, and not in the rest of New York State, this system was changed so that recipients receive a flat grant of $25.00 per person per quarter for all items. This change, in substance nullifying New York State law was instituted as a so-called "demonstration" project. The details of this change are put forth below.

5. As a result of this so-called "simplified payment system" or "flat grant system," plaintiffs and others silimarly situated, have been harmed in that necessities which under New York State law, they would be entitled to, are now included in this so flat grant, and that the sums allocated are inadequate by any reasonable standard.

6. Plaintiffs allege on information and belief that the activities of defendants, amongst other improper reasons are designed to furnish and limit plaintiffs and other similarly situated members of City-wide Coordinating Committee of Welfare Groups affiliated with the National Welfare Rights Organization in encouraging public assistance

recipients to obtain grants for special needs as allowable by New York law as more fully set forth below.

Pltfs & minor children as hereinafter described have been placed in precarious position as result of Demo project & in danger of life & health & suffering violation of Const & rt equal prot due process of law & other rts under Soc Sec Act as set forth in detail § XI - XXI of Above Complaint

MA

WORK SHEET

CASE NAME____________________ CASE NO.____________________

ADDRESS____

FAMILY COMPOSITION DATE OF BIRTH

(1)____________________
(2)____________________
(3)____________________
(4)____________________
(5)____________________
(6)____________________
(7)____________________
(8)____________________
(9)____________________
(10)____________________
(11)____________________
(12)____________________

GROSS INCOME (Weekly - Bi-Weekly - Twice a Month - Annually) $__________

MINUS DEDUCTIONS $__________

NET WEEKLY INCOME $__________

NOW Multiply 4 1/3 or 2 1/6 $__________

ALLOWABLE NET MONTHLY INCOME FOR FAMILY SIZE, per 182 $__________

SUBTRACT APPLICANT'S MONTHLY INCOME $__________

THE RESULT IS EITHER AN M.I.L.S. DEFICIT OR OVERAGE $__________

COMPUTE DEDUCTIBLE
GROSS $
NET $

ALLOWABLE DEDUCTIONS

Federal Tax	$	$
State Tax	$	$
Health Ins.	$	$
Garnishee or Court Order	$	$
Total Deductions		

HEALTH INSURANCE INFORMATION

Name of Company____________________

Policy No.____________________

COMMENTS:

PERIOD COVERED____________________
AUTHORIZED DATE____________________
WORKER'S INITIALS____________________

2 criteria 516-MO6-7330

Social Factors - -
Medical

Few Home Visit - generally phone or mail

regardless of income of b/w 21 + 65 not eligible unless disabled - need medical disabled plus possible social for force

- difficult to get woman on AD - because of can cook + clean house not AD.
ie. diabetes not disability
but pregnancy not disable - but can get ~~ADC~~ medicaid
  - apply medicaid - they will handle or - ADC
  - When mothers enter hosp. mother + kids eligible - father not elig.
  - mother - 4 mo preg. & later
- public assistance clients get medical card every month & medicaid paid out of same funds
- Medicaid pays pre-natal + 6 weeks post operative
  - budget only consideration
- diagnosis can be altered or clarified by physician in local office - resolve difference b/w clients physician & area director.

dical Rehabilitation Program
for children under 21 - 90% orthodontia
Medicaid MA. screens for mental rehabilitation
alth Department - more liberal than
  - adult polio, cleft palat. open heart surgery
will give free diagnoses regardless of financial need - Children under 21

THE CITY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

SUBJECT:	PREGNANCY ALLOWANCE AND RELATED SPECIAL GRANTS	PROCEDURE NO. 68-43
		August 27, 1968
TO:	Administrative Group Case Unit Intake Unit	Classification 6
		Replaces: P 39-72 (6)
FROM:	Dr. Jack R. Goldberg, Commissioner of Social Services	Supplements: I 68-65 (5,9,18)

Distribution: C

Effective: Immediately

I. INTRODUCTION

A. Purpose

This procedure is being issued to provide information and instructions for authorizing a pregnancy allowance and related special grants.

B. General Information

1. Every effort shall be made to identify clients in need of pregnancy allowances.

2. Clients shall be encouraged to obtain prenatal and postnatal care, and when necessary, the Caseworker shall assist the client in obtaining this care. Case entries shall be made to reflect all discussions with the client and services provided for appropriate care.

3. Verification of pregnancy may be made by any of the following means:

    a. A statement from the attending physician.

    b. A letter from the administrator of the hospital or clinic.

    c. A clinic card indicating enrollment in a prenatal clinic.

4. The pregnancy allowance of $2.75 per semi-monthly period shall terminate immediately upon notification of the termination of the pregnancy.

5. In accordance with current procedure, appropriate cases shall be reclassified to ADC upon verification of pregnancy. All HR and VA cases where pregnancy has been verified shall also be reclassified to ADC.

II. DETAILED INSTRUCTIONS

Caseworker 1. Upon notification of pregnancy, revises recurring budget to include $2.75 semi-monthly pregnancy allowance; makes appropriate case entry; notifies client of increase in grant.

(over)

Caseworker 2. Revises Form W-662, Recurring Authorization (in ABC offices use appropriate form), to reflect additional dependent child; forwards all material to Unit Supervisor for approval.

" 3. At the beginning of the eighth month of pregnancy, authorized special grant of $100, "allowance for essential needs of expected infant" (Code 30); makes appropriate case entry; notifies client of special grant; forwards material to Unit Supervisor for approval.

" 4. If client requests this special allowance within 60 days after the birth of the child, verifies birth of child prior to authorizing the grant.

" 5. Upon discharge of the child from hospital to home, adds child to recurring grant; issues a prorated grant to cover the period between the date of birth and the effective date of the adjusted recurring grant.

" 6. Authorizes by means of Form W-661, Single Issue Authorization (or appropriate single issue form in ABC offices), the cyclical grant for the infant added to the budget. If the infant is added to the budget during the first month of the cyclical period, the allowance for the full cyclical period ($25) shall be granted. If the infant is added during the second month of the cyclical period, two-thirds of the allowance ($17) shall be granted and if added in the third month of the cyclical period, one-third of the allowance ($8.50) shall be granted. An appropriate case entry shall be made regarding the addition of the infant to the budget as well as of the cyclical grant authorized.

TE: In the event that there is no live birth and other case factors remain the same, the unborn child shall be statistically removed from the family composition using the appropriate code for the death of a dependent child. If appropriate, the case shall be reclassified back to its former category.

THE CITY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

SUBJECT: CYCLICAL GRANTS - SIMPLIFIED PAYMENT SYSTEM	INFORMATIONAL NO. 68-65
TO: Administrative Group For the Staff	August 27, 1968
FROM: Dr. Jack R. Goldberg, Commissioner of Social Services	Classifications 5, 9, 18

Distribution: C Effective: Immediately

We have all been struggling with existing policies and procedures as they affect the issuance of special grants.

We are aware of inequities to many recipients, difficulties in achieving accountability in administration and the tremendous pressures placed on staff as a result of existing unrealistic policies and procedures.

After many months of discussion and negotiation with State and Federal agencies, a plan has been approved effective September 1, 1968, to provide for an automatic cyclical grant four times a year to augment the recurring budget.

This cyclical grant will replace special grants for clothing, household equipment and furniture.

Exceptions to this are restricted to:

1. Expenses related to the birth of a child.
2. Replacement of possessions if they are destroyed by fire or other disaster.
3. Expenses related to a child graduating from school or special equipment for camp.
4. Expenses related to moving from a furnished room to an unfurnished apartment.

In each of the above exceptions, a fixed sum is being established. Details will be forwarded to staff very shortly for their guidance.

The four times a year cyclical grant will provide an allowance of $25.00 ($100.00 per year per family member) for each member of the public assistance household for whom eligibility has been certified and who is in receipt of a recurring grant except of persons in nursing homes, homes for the aged, and homes for the blind. When a case is accepted during the first month of a quarterly period, the entire allowance for the full quarter will be granted. If the case is accepted during the second month of the quarter,

(over)

two-thirds of the allowance ($17.00 per person) will be granted and if accepted in the third month of the quarter, one-third of the allowance will be granted (or $8.50 per person).

Appropriate, more specific details and instructions will be forwarded shortly.

The introduction of this new "Simplified Payment System" will probably result in some initial controversy and dissatisfaction both pro and con, from public assistance recipients, the general public and staff. There will be initial stresses and pressures. It is my firm conviction that this is a first necessary step of a series of steps and changes necessary to provide greater equity for clients, more responsible administration and the freeing of staff from some of the difficult burdens inherent in our current system.

I hope this will begin to permit staff to provide more of the necessary services that public assistance recipients need and want.

Your cooperation and help is greatly appreciated.

THE CITY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

SUBJECT: CYCLICAL GRANT FOR CLOTHING AND HOUSEHOLD REPLACEMENTS

TO: Administrative Group
For the Staff

PROCEDURE NO. 68-42

August 27, 1968

Classifications 5, 9, 18

Replaces: P 66-31
P 68-16

Amends: P 65-28

Supplements: I-68-65 (5,9,18)

Distribution: C

Effective: Immediately

In order to provide better services to our clients and to meet their needs efficiently, a plan has been developed to issue automatically a special cyclical allowance for clothing and household replacements, every three months, which would supplement the regular recurring grant. It is expected that this new method of issuing grants will insure that all recipients receive these allowances which will enhance their standard of living and at the same time permit staff to render the total range of services to which clients are entitled. This program will eliminate the need for authorizing special grants for clothing and household replacements except in situations involving the establishment of a home, increase in family composition, or disasters such as fires. In these situations a flat sum will be issued based on the number of people in the family household and the number of rooms occupied. Persons in nursing homes, homes for the aged and homes for the blind are not eligible for the cyclical grant.

This automatic cyclical grant will be issued four times a year and provide an allowance of $25 per quarterly period ($100 per year, per family member) for each member of the public assistance household for whom eligibility has been certified and who is in receipt of a recurring grant.

Individual authorizations will continue to be processed by the Caseworker in these instances: When a case is accepted; when someone is added to the family composition. When this occurs during the first month of the quarterly period, the entire allowance ($25 per person) for the full quarter shall be granted; if during the second month of the quarter, two-thirds of the allowance ($17 per person) shall be granted and if in the third month of the quarterly period, one-third of the allowance ($8.50 per person) shall be granted. Authorizations shall be issued under Code 40.

The Caseworker will also continue to authorize special grants as needed for clients in nursing homes, homes for the aged and homes for the blind using special grant Code 50. Clothing and household replacements required as a result of a disaster, the establishment of a home, and special clothing for graduation and camp attendance may be authorized using the appropriate special grant codes; e.g., Code 46 for disaster clothing.

At the time the Caseworker authorizes a cyclical grant (full or pro-rata share), an entry covering the basis for the grant and the amount shall be made in the case record. Care shall be exercised to insure against duplication in the event of reopening cases within the cyclical period.

LOWMAN, LOUISE et al. VS. DEPARTMENT of SOCIAL SERVICES NEW YORK 1969
(WELFARE CASE)

Box 39
Folder 7

State Historical Society of Wisconsin

Please Retain Original Order

DP:al
52749

Flat Grant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--------------------------------x

LOUISE LOWMAN, et al., :

Plaintiffs, : **ORDER**

-v- : 68 Civ. 4611

DEPARTMENT OF SOCIAL SERVICES :
OF THE CITY OF NEW YORK, et al.
:
Defendants.
:
--------------------------------x

Defendants having made an application pursuant to Rule 6(b) of the Federal Rules of Civil Procedure for an enlargement of the time to answer or move with respect to the complaint and an enlargement of the time to answer or move with respect to plaintiffs' interrogatories, and the matter having come on for hearing before the Court on January 29, 1969, no notice being required, and the defendants having appeared in support of their motion by John J. Loflin, Assistant Corporation Counsel for the City of New York, Joel Sachs, Assistant Attorney General for the State of New York and David Paget, Assistant United States Attorney for the Southern District of New York, and the application having been granted,

NOW, on the annexed affidavit of John J. Loflin, Assistant Corporation Counsel for the City of New York, it is hereby

ase take notice that a ....
vithin is a copy, was this day
the within entitled action, in
e Clerk of this Court.

.... 19 ....

Yours, etc.,

United States Attorney,
Attorney for ....

Attorney for ....

notice that the within ....
d for settlement and signature
le ....
District Judge at the office of
om 601, United States Court
quare, Borough of Manhattan,
ork, on the .... day of ....
30 o'clock in the .... noon,
eafter as counsel can be heard.

rk, ... 19 ....

Yours, etc.,

United States Attorney,
Attorney for ....

Attorney for ....

Form No. USA-33s-270
(Rev. 10-25-65)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

LOUISE LOWMAN, et al.,

Plaintiffs,

-v-

DEPARTMENT OF SOCIAL SERVICES
OF THE CITY OF NEW YORK,

Defendants.

ORDER

68 Civ. 4611

ROBERT M. MORGENTHAU
TEL: CO 7-7100 United States Attorney,
Attorney for USA

Due service of a copy of the within is hereby admitted.

New York, ..., 19........

Attorney for

To

Attorney for

FPI—SS—8-2-67—10M—1556

DP:al
52749

ORDERED, ADJUDGED AND DECREED that the defendants time to move or answer with respect to the complaint is enlarged to and including Februrary 14, 1969, and it is further

ORDERED, ADJUDGED AND DECREED that the defendants time to move or answer with respect to plaintiffs' interrogations is enlarged to and including February 14, 1969.

Dated: New York, New York

January 29 ,1969.

s/ Frederick v.P. Bryan
U. S. D. J.

take notice that a ....
in is a copy, was this day
e within entitled action, in
lerk of this Court.

.... 19 ......

Yours, etc.,

United States Attorney,
Attorney for ____________

Attorney for ____________

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or settlement and signature
trict Judge at the office of
601, United States Court
re, Borough of Manhattan,
, on the .... day of ....
o'clock in the .... noon,
ter as counsel can be heard.

, ... 19 ......

Yours, etc.,

United States Attorney,
Attorney for ____________

Attorney for ____________

Form No. USA-33s-270
(Rev. 10-25-65)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

LOUISE LOWMAN, et al.,

Plaintiffs,

-v-

DEPARTMENT OF SOCIAL SERVICES
OF THE CITY OF NEW YORK,

Defendants.

ORDER

68 Civ. 4611

ROBERT M. MORGENTHAU
TEL: CO 7-7100 United States Attorney,
Attorney for USA

Due service of a copy of the within is hereby admitted.

New York, ..., 19 ......

Attorney for

To

Attorney for

FPI—SS—8-2-67—10M—1556

DRAFT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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LOUISE LOWMAN, *et al*.,

Plaintiffs,

vs.

DEPARTMENT OF SOCIAL SERVICES
OF THE CITY OF NEW YORK, *et al*.,

Defendants.

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PLAINTIFFS' INTERROGATORIES
UNDER RULE 33, F.R.C.P.

Plaintiffs, by their attorneys of record, submit herewith interrogatories to be answered by the defendant, JAMES A. CALLISON, pursuant to Rule 33 of the Federal Rules of Civil Procedure, within fifteen days from the date of service hereof. Pursuant to Rule 33, the interrogatories are to be answered separately and fully, in writing, under oath. The interrogatories referred to are:

1. Did New York in support of its application for the Simplified Payment System demonstration project submit to defendant Callison any analysis, study or report on the amounts that were available and supplied to meet individual needs for clothing and furniture at and prior to the time of the application for said demonstration project?

2. If the answer to interrogatory #1 is yes, describe the nature, title, author and date of such analysis, study or report.

3. Is defendant Callison aware of any precedent or policy within the Department of Health, Education and Welfare allowing a demonstration project under 42 U.S.C. 1315 to be used to lower the amount of the grant supplied or available to a particular group of individuals?

4. If the answer to interrogatory #3 is yes, describe the nature of such precedent or policy.

5. Prior to the approval of the Simplified Payment System demonstration project, did defendant Callison, or any other department, division or individual within the Department of Health, Education and Welfare, make any attempt to obtain from the applicant New York State assurances offered by the applicant?

6. If the answer to interrogatory #5 is yes, describe the nature, location, title, author and date of any such assurances of legal authority offered by the applicant New York State Department of Social Services.

7. In support of their application for a Simplified Payment System demonstration project did New York submit to defendant Callison any materials supplemental to the application itself describing the goals, innovative methods or approaches, criteria to be used in evaluation, the result to be achieved and the major problems anticipated in the proposed demonstration project?

8. If the answer to #7 is yes, describe the nature, location, title, author and date of such supplemental materials.

9. Did defendant Callison conduct or cause to have conducted any studies or analysis of the impact which the proposed demonstration might be expected to have upon individuals with various needs and characteristics in New York City or the adequacy of the grants supplied under the demonstration project to meet the needs previously met in New York through special grants?

10. If the answer to interrogatory #9 is yes, describe the nature, location, title, author and date of any such study or analysis whether in the form of a report, document, letter or memoranda.

11. Is it the usual practice and policy of the Department of Health, Education and Welfare to approve demonstration projects one day after they have been requested by a state?

12. Did New York State Department of Social Services submit any materials in support of their application for the Simplified Payment System demonstration project indicating that there was an urgent need for the changes embodied in the demonstration and that it should be approved with extreme haste?

13. If the answer to interrogatory #12 is yes, describe the nature, location, title, author and date of any such supplemental materials requesting rapid approval of the proposed demonstration.

14. Did New York supply or did Defendant Callison or any other department, division or individual within the Department of Health, Education and Welfare prepare any study, report or analysis to determine whether the grants available under the Simplified Payment System demonstration project met the requirement of 42 U.S.C. 402(a)(23)(1967) mandating that amounts used by the states to determine need be adjusted to fully reflect changes in the cost of living?

15. If the answer to interrogatory #14 is yes, describe the nature, location, title, author and date of such studies and analysis whether in the form of a report, document, letter or memoranda.

16. Prior to approving New York's application for a Simplified Payment System demonstration project did defendant Callison consult with or obtain the advice or recommendations of any other individual, department or agency within the Department of Health, Education and Welfare?

17. If the answer to Interrogatory #16 is yes, list any individual, department or agency from whom information, recommendations or advice was obtained and describe the nature, location, title, author and date of any such recommendation, information or advice whether in the form of a report, document, letter or memoranda.

DRAFT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LOUISE LOWMAN, *et al*., Plaintiffs, vs. DEPARTMENT OF SOCIAL SERVICES OF THE CITY OF NEW YORK, *et al*., Defendants.	VI PLAINTIFFS' INTERROGATORIES UNDER RULE 33, F.R.C.P.

Plaintiffs, by their attorneys of record, submit herewith interrogatories to be answered by the defendant, JACK R. GOLDBERG, [George K. Wyman, George W. Chesboro] pursuant to Rule 33 of the Federal Rules of Civil Procedure, within fifteen days from the date of service hereof. Pursuant to Rule 33, the interrogatories are to be answered separately and fully, in writing, under oath. The interrogatories referred to are:

1. Prior to the application to the U.S. Department of Health, Education and Welfare for approval of the Simplified Payment System demonstration project, did the ~~(a) discuss with~~ defendant New York City [State] Department of Social Services attempt to obtain changes in the Board Rules or Regulations of the New York State Department of Social Services which would have abolished or limited the special grants for special needs and institute flat grants for clothing and furniture?

2. Prior to August 15, 1968, was the defendant New York City [State] Department of Social Services informed by any state or city official that action by the New York Legislature would be required

to abolish the special grants to meet public assistance recipients' needs for clothing and furniture, or to substitute therefor a system of paying regular fixed amounts for clothing and furniture?

3. If the answer to Interrogatory No. 2 is affirmative, give the names of those state and city officials, the content of their opinions and the circumstances under which those opinions were offered.

4. At the time that New York's application for a Simplified Payment System demonstration project was prepared were any individuals, departments or divisions within the New York State or City Department of Social Services consulted about the amounts which would need to be provided to individuals under the Simplified Payment System to reasonably meet minimal needs for clothing and furniture?

5. If the answer to Interrogatory No. 4 is yes, list the names of those individuals and departments consulted.

6. What were the amounts which the individuals and departments listed in Interrogatory No. 4 recommended as necessary to reasonably meet public assistance recipients' needs for clothing and furniture?

7. Were the recommendations of the individuals and departments listed in Interrogatory No. 4 supported by any documents, letters, statistical or budgetary studies, or need or cost analysis?

8. Describe the nature, location, title, author, date of any statistical or budgetary studies, need or cost analysis whether in the form of a report, documentm letter, or memoranda which the defendant Department of Social Services considered in determining the figure of $100 per person per year for Simplified Payment System grants for clothing and furniture?

9. In preparing the request for the Simplified Payment System Demonstration project did the Defendant New York City Department of Social Services rely upon any statistical or budgetary studies or need or cost analysis which showed that public assistance recipients living in New York City need lesser amounts to buy minimal items of clothing and furniture than to individuals living in other areas of the state?

10. If the answer to Interrogatory No. 9 is yes, describe the nature, location, title, author and date of any such study or analysis whether in the form of a report, document, letter or memorandum.

11. In preparing the request for the Simplified Payment Systen demonstration project, did the defendant Department of Social Services consider alternative methods of meeting the needs of individuals who had not been initially provided until the items of

furniture and clothing necessary for a minimal level of decency, and who thus reached grants for both the initial provision and replacement of essential items.

12. If the answer to Interrogatory No. 11 is yes, describe the alternative methods considered and the nature, location, title, author and date of any report, document, letter or memorandum concerning the problem of making reasonable grants to individuals with extraordinary needs for the initial provision of minimal items of furniture or clothing.

13. Under the Simplified Payment System, as now implemented and applied, is the $25 cyclical grant the only available special grant to meet initial needs for furniture and clothing other than those needs arising from a fire, or a move from furnished to unfurnished rooms?

14. If not, describe other available special grants to cover initial needs for these items.

Flat Grant

MEMORANDUM

Center on Social Welfare Policy & Law
COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

401 West 117th Street
New York, N. Y. 10027
(212) 280-4112

Lee A. Albert
Project Director

Paul Dodyk
Faculty Director

January 7, 1969

TO: David Gilman, John C. Gray, John DeWitt Gregory, Mary Kaufman, David Lubell, Carl Rachlin, Edward V. Sparer.

FROM: Lee Albert and Sylvia Law

RE: Lowman v. Department of Social Services (flat grant)

Enclosed you will find a series of interrogatories to our defendants, designed primarily to discover just what they may have of interest to us which we may then be able to reach through depositions or orders to produce documents.

Since the defendants are entitled to take 15 days to answer our questions, it would probably be good to initiate this preliminary step in discovery as soon as possible -- hopefully by the end of the week.

Please call if you would like to suggest additions or changes to the questions, or if you do not believe that it is a good idea to proceed in this manner.

We look forward to seeing you at the meeting concerning this case to be held at the Center on Monday, January 13, at 2 P.M.

LAA/SAL:dl

Flat Grant

1 (a) Set forth a copy of any document or written proposal submitted to any official of the State of New York which would have amended or limited such system of grants for special needs.

1 (b) Set forth any correspondence with officials of the State of New York in this regard sent to or received from any such official.

1 (c) Were any meetings held between representatives of the City of New York and the State of New York? If so, when? Who was present? State the number of such meetings and the substance of the discussions and which copies of any proposals or memoranda not included in 1 (a) or (b), above.

3 (a) Were such opinions given in writing or orally? If in writing, set forth a copy; if orally given, state the substance.

4 (a) Set forth copies of any memoranda or correspondence in this regard to and from the various City and State departments consulted.

4 (b) Give the dates of meetings held in this regard, with whom each meeting was held, what was the net result of such meetings? Were minutes kept of such meetings; set forth a copy if minutes were kept.

9 (a) When was the first proposal, letter, telegram or memorandum submitted to any official of the U.S. Department of HEW with regard to Simplified Payment Plan? To whom was it submitted? Set forth a copy of such.

9 (b) Was any correspondence, telegrams, or other memoranda received from any official of the U.S. Department of HEW in this regard? Set forth copies of each.

9 (c) Were any meetings held in this regard with any official or officials of the U.S. Department of HEW? When were such meetings? With whom were they held? What was the substance of each such meeting? Were minutes kept of such meetings? If so, set forth copies.

9 (d) When did Defendant Goldberg or any subordinate employee of the New York City Department receive information that the U.S. Department of HEW approved either in principle or specifically the proposal for the institution of the Simplified Payment Method? Set forth copies of any correspondence, telegrams or memoranda in this regard.

15. At any time prior to the public announcement of the Simplified Payment System, were any public hearings called by any of the Defendants, or by any City, State or Federal legislature? If yes, when and where were such hearings held?

15 (a) Were any individuals or groups consulted other than the official bodies referred to above? If so, when, where, and who were the individuals, and was the approval of such persons or groups obtained thereto?

16. At any time prior to tbe institution of such plan, were Social Service Departments of other cities, counties and towns consulted? If so, when? What cities, counties, or towns?

17. Did any application, to the knowledge of the Defendants, include other areas of New York State besides New York City? If so, which areas?

SEDFRE

LOWRY, JOHN, CYRIL VS. NORTH CAROLINA 1964
(KIDNAPPING)

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No. 437

TWENTIETH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term, 1964

****

STATE)
v.)
JOHN CYRIL LOWRY) From Union

****

DEFENDANT APPELLANT'S BRIEF

****

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No. 437 TWENTIETH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term, 1964

****

STATE)
)
v.) From Union
)
JOHN CYRIL LOWRY)

****

DEFENDANT APPELLANT'S BRIEF

****

(Since there are two records relevant to this appeal, all references to that in No. 437 shall be designated as RL and to that in No. 438 as RM.)

QUESTIONS INVOLVED

1. Whether the Trial Court erred in denying appellant's motion for severance and separate trial of his case from those of three other persons indicted? (RL 12, 13)

2. Whether the Trial Court erred in denying the appellant's motion to quash the indictments herein, on the grounds that appellant was, to his prejudice, denied his constitutional and statutory right to a speedy trial? (RL 13-16)

3. Whether the Trial Court erred in denying appellant's motion for a bill of particulars? (RL 16-19)

4. Whether the Trial Court erred in denying appellant's motions to quash the indictment and in arrest of judgment, on the grounds that the indictments were insufficient to charge the

of kidnapping? (RL 19-20, 58)

ther the Trial Court erred in denying
t's motion to quash the indictments
on the grounds that the participation
es on the grand jury which returned
ctments was unconstitutionally abridged?
6)

ther the Trial Court erred in denying
t's challenge to the array, on the
that the participation of Negroes on
t jury panel was unconstitutionally
? (RL 26-29)

ther the Trial Court erred in restrict-
llant's proof during the hearing on
lenge to the array by denying him
inspect the jury box? (RL 29-31)

ther the Trial Court erred in denying
t's motions for change of venue and
or continuance, on the grounds that
local publicity associating appellant
munism and communists prejudiced ap-
s constitutional and statutory right
r and impartial trial? (RL 39-57)

ther the Trial Court erred in permit-
timony concerning firearms, and, in
ar, fifteen rifles and some thousand
f ammunition recovered from the home
lefendant, in permitting said objects
wed by the jury, and in denying ap-
motion for a mistrial when it was
t said evidence was incompetent and
ble? (RL 71-73, 77)

ther the Trial Court erred in denying
's motion for a mistrial when a State's
estified about the purported discovery
e in the yard of one Robert Williams?

her the Trial Court erred in denying
s motions for judgment of nonsuit and

to set aside the verdict, on the grounds that there was insufficient evidence connecting appellant to the kidnapping to allow the case against him to go to the jury? (RL 58, 75, 76)

PRELIMINARY STATEMENT

This is an appeal from two judgments of conviction rendered on February 28, 1964, by the Superior Court for Union County sentencing appellant to confinement in the State's Prison for a period of not less than three nor more than five years in the Youthful Division, both sentences to run concurrently.

STATEMENT

On August 31, 1961, a Union County Grand Jury returned two true bills of indictment against appellant charging him with the kidnapping, on August 27, 1961, of one G. Bruce Stegall (No. 1090), and one Mabel Stegall (No. 1091). (RL 2-3) With reference to No. 1090, only H. C. Dutton, a Union County deputy sheriff, (RL 64) testified before the Grand Jury: with reference to No. 1091, only Dutton and John Vanderford, a Special Agent with the North Carolina Bureau of Investigation, (RL 67-68) testified. (RL 4-5) Bail in the sum of $10,000.00 was set on September 20, 1961. (RM 4)

The indictments against appellant were set for trial at the October 1961 Term of the Union Superior Court. (RL 15; RM 4-6) Although his counsel had come from New York City, fully prepared to proceed to trial and, over appellant's strenuous objections, his case was continued. (RL 15) On October 30, 1961, bail was reduced to $4,000.00 (RM 4-6) and posted at that time.

The cases were subsequently continued at the February 1962 Term of the Union Superior Court. (RM 7-8) Because the Solicitor refused

r the cases for trial thereafter,
and his attorneys appeared in Union
ourt during the May 1962 Term thereof
moved for an immediate trial on the
s. This motion was denied by the
Judge. (RL 15) See, also, RM 52-56.

ot until February 18, 1964, two and
rs after his arrest, that appellant's
finally called for trial (RL 6) be-
al Judge Walter E. Brock, who was
rsuant to a commission dated January
(RL 5, RM 8-9) Before pleading to
ments, appellant made the following
ll of which were denied and excep-
noted:

ion for a severance and separate
on the ground that joint trials
prejudicial, unfair and improper.
2-13)

ion to quash the bills of indictment
ailure to grant a speedy trial. (RL
)

ion for a bill of particulars. (RL
)

ion to quash the indictments as in-
cient. (RL 19-20)

ion to quash the indictments as
red by an illegally constituted
jury. (RL 20-26)

llenge to the array and a motion to
arge the petit jury panel as illegally
ted and impaneled. (RL 26-29)

with reference to Motions #5 and #6
ed by the Court on February 19 and
-39) (RM 21, 23, 104-119) Prior
ppellant's application for leave to
e jury box was denied by the trial
30-31)

Thereafter, appellant's motions to quash the indictments and discharge the petit jury were denied. (RM 23-26) Appellant then pleaded "not guilty" to both bills of indictment. (RL 57)

On February 19, 1964, examination of prospective jurors began (RL 9) and continued until February 21, 1964, when twelve jurors were selected and approved. (RL 11) On its own motion the trial Court ordered the selection of an alternate juror. (RL 11-12)

On February 20, 1964, before the passing of the twelfth and alternate jurors, appellant moved for a continuance and a change of venue (RL 39-40, 50, 53) because of prejudicial local publicity in the MONROE ENQUIRER and the CHARLOTTE NEWS suggesting that appellant's case had been "adopted" by the Communist Party (RL 45-48) and that Communist leaders and propagandists had arrived in Monroe in connection with the trial. (RL 48-50)

The Trial Court denied this motion on the ground that there was no indication that any of the eleven passed jurors or ten prospective jurors had been affected by the articles in question. (RL 53) In questioning the passed jurors it was determined by the trial Court that three had read one of the articles, two another, and one a third. (RL 54) In addition, it was further determined that five of the jurors read the MONROE ENQUIRER regularly and two the CHARLOTTE NEWS. (RL 54)

On February 24, appellant moved for a mistrial and a change of venue on the ground that further prejudicial publicity about Communism and its alleged connection to the case had appeared in the CHARLOTTE NEWS and the CHARLOTTE OBSERVER on February 21 and 24, respectively. (RL 55-56) This motion was also denied. (RM 34-35)

Testimony began on February 24, 1964, with the first of six witnesses called by the State.

75) Three of the State's witnesses,
utton, Deputy Sheriff for Union County;
ssup, Senior Officer in charge of the
District of the State Bureau of In-
tion, and John R. Vanderford, Special
ith the North Carolina Bureau of In-
tion, testified as to conversations
e appellant at the Monroe Police Sta-
August 29, 1961. During their testi-
ppellant renewed a motion made on Feb-
9, 1964, to suppress the portion relat-
statements purportedly made by appel-
the ground that he had been denied
during the period they were exacted
n. (RM 16-17, 209, 224, 248)

nnection with appellant's objection, a
re examination was conducted. (RM 210-
ppellant testified that he was then 20
ld, (RM 215) had been interrogated for
ours, (RM 214) had not been advised of
nts, (RM 213) had constantly asked for
without success, (RM 213, 215-16) and
ry frightened." (RM 215) Appellant's
on to Dutton's testimony on this point
wever, overruled, (RM 217) as were sub-
objections to that of Jessup (RM 224)
derford (RM 248).

Agent Vanderford was testifying, the
ourt, out of the presence of the jury,
gated one Edward Lemenski, a spectator,
eighteen books he had in his posses-
RM 276-281) Although Lemenski stated
was not selling or distributing the
n question - - "The Marxist - Leninist
ly" - - in the courtroom, they were or-
emporarily impounded by the Court below.
) Appellant strenuously objected that
nduct on the part of trial Judge in
urt was prejudicial to him. (RM 280-282)

the testimony of A. A. Mauney, Chief
e of Monroe, N. C., testimony was ad-
ver appellant's strenuous objection as
resence of firearms in the home of co-

defendant. (RL 71) Subsequently 15 heavy-caliber rifles, as well as more than a thousand rounds of ammunition, including at least one belt of machine gun shells, were brought into the courtroom and exhibited to the jury. (RL 72-73) Ultimately appellant's objection to the introduction of both the guns and the ammunition was sustained. (RL 74) Appellant's motions, however, for mistrials because of the exhibition of the weapons and the ammunition to the jury, as well as a reference to dynamite allegedly found in the yard of one Robert Williams, were denied. (RL 73-75)

Appellant's motion for a judgment of nonsuit at the close of the State's direct case was denied. (RL 75-76) Thereupon appellant rested. (RL 76) After offering two rebuttal witnesses, the State rested. (RL 77) The jury thereupon retired and, after deliberating thirty minutes,* returned "guilty" verdicts on both indictments. (RL 77)

Appellant's motions in arrest of judgment and to set aside the verdict were denied. (RL 58) On February 28, 1964, appellant was sentenced to be confined in the State Prison for not less than three nor more than five years in the Youthful Offenders Division on each indictment, the sentences to run concurrently. (RL 57) Notice of appeal to the Supreme Court of North Carolina was given in open Court and an appeal bond in the sum of $1,500.00 and an appearance bond of $5,000.00 were adjudged sufficient. (RL 58)

---

*During which time it also considered two charges against each of three co-defendants, (RM 353-355) making an average of less than four (4) minutes for each "deliberation."

THE FACTS

nt then twenty years of age, along
er Freedom Riders who had been arrested
d in Jackson, Mississippi, for at-
to use interstate travel facilities
egrated basis, arrived in Monroe,
olina, on August 17, 1961. (RL 65,
215) Upon his arrival, he was given
quarters at the home of Dr. A. E.
Negro physician residing and then in
RL 65-68) All of his meals, however,
n either at the home of one, Robert
at 410 Boyte Street in Monroe, or at
house, known locally as Freedom House,
away. (RL 65, 68, 71)

uently, and beginning on or about Au-
1961, appellant participated in the
of the Union County Courthouse in
RL 62) This picketing terminated at
ately 5:00 P.M. Sunday, August 27,
h an attack upon the pickets by white
n the vicinity of the courthouse and
equent arrest of most of the demon-
(RM 326-329)

after the above arrests, Mr. and Mrs.
Stegall, of Marshville, Union County,
olina, arrived in the vicinity of the
se. (RL 59) The Stegalls then drove
Street, where they entered the yard
the home of one, Robert Williams. (RL
Several hours later, the Stegalls re-
their automobile and left the area.
At approximately 8:30 that evening
e informed Deputy Sheriff H. C. Dutton
n they first drove into Boyte Street,
had been stopped by a crowd of Ne-
blocked the thoroughfare. (RL 59, 64)

rther stated that they had been forced
e vehicle and escorted into the front
f the Williams house where they re-
r some thirty minutes. (RL 60) During
od, Mr. Stegall spoke on the telephone

to Monroe Police Chief A. A. Mauney, informing him that he and his wife were in Robert Williams' house. (RL 64)

The Stegalls were then escorted across the Williams' back yard and into the empty ground floor room of another house. (RL 60-61) At approximately 8:30 P.M., the keys to their car were returned to them and they were permitted to leave the building. (RL 61) They drove off in their car which they found parked in front of Williams' house. (RL 59, 61, 64) They were unharmed.

Shortly before 2:00 P.M. on August 29, appellant was arrested and taken to the Monroe police station where he was interrogated by Sheriff Dutton, Senior Officer Jessup and Special Agent Vanderford for seven hours. (RL 64-70) (RM 213) The interrogation began at approximately 2:00 P.M. and ended at 9:00 P.M. (RM 214) During all of this time, appellant repeatedly asked for an attorney, (RM 213-215) but was not permitted to see one until Friday, September 1, 1961.(RM 215)

Sometime after appellant's arrest, he appeared in a line-up of three white boys at the police station. At that time, he was identified by Mrs. Stegall as the white boy who had gotten into her car on Boyte Street on August 27, just as she was being ordered to leave it. (RL 63) According to Mrs. Stegall, appellant, who was the only white boy she observed in Boyte Street that afternoon, (RL 63) had entered the car on the driver's side but she saw him do nothing further. (RL 59)

POINT I

APPELLANT'S MOTION TO QUASH THE INDICTMENTS FOR FAILURE TO GRANT A SPEEDY TRIAL SHOULD HAVE BEEN GRANTED.

(Exception #2, Assignment of Error No. 2.)

Appellant was arrested on August 29, 1961,
nd not brought to trial until February 18,
964, a period of some thirty months. During
his long interval, he made every effort to
btain a speedy trial. Whenever this case ap-
eared on the criminal calendar of the Court
elow, appellant was ready to proceed to trial
nd interposed objections to each and every
djournment. On two separate occasions, his
ounsel, who resided and practiced in New York
ity, appeared in Court prepared for trial.
ach adjournment was granted upon the motion
f the Solicitor and over appellant's strenu-
us protests.

The Sixth Amendment to the Constitution of
he United States provides that:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . ."

lthough the Constitution of North Carolina
oes not contain any express reference to
speedy trial," as such, the phrase "by the
aw of the land," which appears in Article I,
ection 17, has been interpreted as inter-
hangeable with due process of law. STATE v
ERRY, 103 SE 2d 404 (1958).

The failure of the State to provide appel-
ant with a speedy trial is in violation of
oth the Sixth and Fourteenth Amendments to
he Constitution of the United States. It is
ecognized that there is some authority that
he Due Process Clause of the Fourteenth Amend-
nt does not make the Sixth Amendment's guar-
tee of the right to a speedy trial appli-
ble to State prosecutions. See UNITED STATES,
rel. VON CSEH, v FAY, 195 F. Supp. 432.

However, there is a growing body of substan-
al opinion that there is no logical reason
y such should not be the case. See HUGHES v
INZE, 268 F. 2d 864; STATE v FRIT, 194 La.
3 (1940); STATE v ROBINSON, 262 Minn. 79

(1962); Di LAPO v TUTUSKA, 217 NYS 2d 124
(1960); McCLOSKEY v DIRECTOR OF PATUXENT INST
TUTION, 230 Md. 635 (1963); BURNS v MUNICIPAL
COURT OF LOS ANGELES JUDICIAL DISTRICT, 16
Cal. Rptr. 64 (1961).

One State court has squarely held that the
Fourteenth Amendment makes the speedy trial
provision of the Sixth Amendment binding on
State prosecutions. In PEOPLE v KENYON, 242
NYS 2d 156, the defendant was convicted on Oc
tober 23, 1945, of first degree assault for
which he had been indicted seven years earlie
He then sought to set aside the conviction an
dismiss the indictment against him on the
grounds that he was not afforded a speedy
trial. In reversing his conviction and dis-
missing the indictment, the Court stated as
follows:

> "Until now the Courts have declined to de-
> cide 'whether the right to a speedy trial
> is such a fundamental principle of liberty
> and justice as to come within the due proce
> clause' of the Fourteenth Amendment to the
> Federal Constitution. (PEOPLE v WILSON, 10
> A.D. 2d 297, 301, 200 NYS 2d 792, 797.)
>
> "Within the limitations of the facts in thi
> case, THIS COURT NOW HOLDS THAT IT DOES.
> While this right has not been written into
> our State Constitution, the extant statu-
> tory provisions (Sec. 8, Code of Criminal
> Procedure; Sec. 12, Civil Rights Law) are n
> less a guarantee." (Emphasis supplied.)

In view of the excessive amount of time be-
tween indictment and trial in the within case
and this Court's own statements as to the vi-
tality and significance of the right to a spe
trial (STATE v WEBB, 70 SE 1064 (1911); STATE
v PATTON, 132 SE 2d 891 (1963)), it would see
that the time is ripe for such a determinatic
by this Court and by the Supreme Court of the
United States. Parenthetically, it might be a
propriate here to indicate that the latter

t has never passed on this question.

he controlling statutory law accords with
ellant's assertion that he has been denied
equisite speedy trial. GS 15-10 seems wholly
positive on this issue. Its applicable pro-
ion is as follows:

> SPEEDY TRIAL OR DISCHARGE ON COMMITMENT FOR
> ELONY.—When any person who has been com-
> itted for treason or felony, plainly and
> pecially expressed in the warrant of com-
> itment, upon his prayer in open court to be
> rought to his trial, shall not be indicted
> ome time in the next term of the superior
> r criminal court ensuing such, the judge of
> he court, upon notice in open court on the
> ast day of the term, shall set at liberty
> uch prisoner upon bail, unless it appear
> pon oath that the witnesses for the State
> ould not be produced at the same term; and
> f such prisoner, upon his prayer as afore-
> aid, shall not be INDICTED AND TRIED ON
> HE SECOND TERM* OF THE COURT, he shall be
> ischarged from his imprisonment ..." (Em-
> hasis supplied.)

f the plain words of the statute have any
ning, defendant is entitled to a reversal
his conviction and his discharge under the
ictment. He has clearly not been "tried on
second term of the court" despite his
ayer in open court to be brought to trial."
other determination would render the stat-
meaningless and frustrate the legislative
l.

n STATE v WEBB, supra, the defendant was
mitted to jail for assault upon a justice
he peace on September 24, 1910. The case

---

least nine criminal terms of the
on County Superior Court had inter-
ned before appellant was eventually
ught to trial.

was continued on December 10, 1910, because of the pregnancy of a witness. In January, 1911, defendant's motion for a discharge under GS 15-10 was denied. On appeal, this Court held that the denial was clearly in error but denied relief on the ground that an appeal did not lie from an "interlocutory order."

This Court minced no words, however, in affirming a criminal defendant's right to a speedy trial. "The right of a person formally accused of a crime to a speedy and impartial trial has been a right guaranteed to Englishmen since Magna Carta, and to all peoples basing their system of jurisprudence on the principles of the common law ..." STATE v WEBB, supra, at 1065.

Although STATE v UNDERWOOD, 92 SE 2d 461 (1956), is not exactly in point, it presents a recent expression by a member of this Court on the issue here. The case arose under GS 15-1, which provides that in all misdemeanor cases the charge must be presented to or found by a grand jury within two years of the crime. The precise issue before the Court was whether the warrant issued for defendant under a drunk driving charge and under which he was convicted in a recorder's court was valid upon his appeal to Superior Court.

Although defendant's conviction was affirmed, Judge Denny was shocked by the lack of a speedy trial below.

> "While the defendant is not entitled to the relief he seeks on this appeal, nevertheless we feel constrained to call attention to certain facts revealed by the record. Sixteen terms of criminal court were held in the Superior Court of Harnett County between June, 1953, and the term held in January, 1956, at which the defendant was tried. The trial judge found as a fact 'that the defendant had not been negligent in his attendance upon the court and that witnesses had

en subpoenaed for the defendant each term.'
ch delay would seem to be indefensible. A
fendant should be given a trial as promptly
the condition of the docket will permit.
rthermore, it is an imposition upon wit-
sses to require them to spend so much time
tending court. We sincerely hope that with
r increased judicial manpower, authorized
the last session of the General Assembly,
r criminal and civil dockets in the supe-
ior court in the respective counties may be
ought to a more current status within the
ry near future."

STATE v PATTON, supra, this Court re-
ly underscored the importance of a speedy
l. In that case, the defendant was accused
ommitting armed robbery on October 20,
. An indictment was not returned against
until February, 1960. A month later he was
d and convicted. This conviction was sub-
ently reversed in a federal habeas corpus
eeding by the United States Court of Ap-
s for the Fourth Circuit. Defendant was
retired and convicted once more in May,
.

appeal, this Court held that "the right
speedy trial is designed to prohibit ar-
rary and oppressive delays which might be
sed by the fault of the prosecution." But
e the defendant himself had delayed his
ond trial by his federal proceeding, it
soned, no such oppressive circumstances ex-
d.

the instant case, any delay in calling it
rial lies squarely at the feet of the So-
itor who consistently asked for adjourn-
s because of the existence of extradition
eedings in Cleveland, Ohio, against a co-
endant. (RM 52) Appellant went so far as
sk unsuccessfully in May, 1962, that the
case be marked peremptorily against the
e. (RM 55-56) Appellant has always been
y for trial and there is not one instance

in the record of this case in which he asked for any postponement or adjournment. This brings appellant squarely within the spirit and logic of this Court's rationale in PATTON.

POINT II

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO QUASH THE BILLS OF INDICTMENT BECAUSE OF AN ILLEGALLY CONSTITUTED GRAND JURY.

(Exception #5, Assignment of Error #5.)

A. The Facts

At the heart of the jury selection system in Union County is the Board of County Commissioners. In June of odd-numbered years, the Commissioners receive a jury list from which they proceed to eliminate persons with statutory disqualifications, including those lacking "good moral character" or "sufficient intelligence to serve."[*] The jury list received by the Board is compiled by taking the names of all resident taxpayers in the county and the names of female voting registrants. This is done under the supervision of the Secretary of the Board, who testified that all names from the tax and voter registration books are placed upon the list and, specifically, that no racial discrimination is practiced in preparing the list. (RL 35) The Secretary, Mrs. Louise Fowler, further testified that both the tax books and voter registration books contain racial designations and that these designations are carried over on to the jury list with the result that the Commissioners in performing their subjective winnowing function have before

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[*] Section 9-1, General Statutes of North Carolina. The jury selection system described for Union County is recognizably based upon the statutory directives, but differs in several significant ways, one of which is subsequently pointed out in the text.

he race of each person on the list. (RL
he Secretary gave no reason for the ex-
e of the racial designations upon the
ists. (RL 33-35) In addition to race,
ly other information on the lists as to
erson thereon is name, resident township,
or males only) age.

llant was indicted in 1961, the year in
a new jury list was compiled. (RL 34)
is the practice to destroy the previous
hen a new one is compiled, (RL 34) the
ist was not available at the 1964 hear-
this case. The 1960 census shows that
of 24,467 persons 21 years of age or
in Union County are Negroes, or 18%. The
oks from which the list was compiled
vailable and show 2,013 of 15,498 per-
isted therein to be Negroes, or 14%.
2) Since the comparable figures for males
1963 jury list was combined with female
from voter lists, only 5% of whom were
with the result that the total percent-
Negroes was reduced 1.5%, a similar re-
n must be assumed for the 1961 list. This
result in 12.5% of the persons on the
ist being Negroes.*/

---

r the Court's information, the actual
r of Negroes upon the 1961 list was 1,448
11,552 names, or 12.5% as stated. Only
1,170 women, or 5%, were Negro, thus
ing the 14% figure for males on the tax
.

ese figures are available to counsel from
ranscript of a hearing counsel conducted
allenges to the jury system in February,
in STATE v COVINGTON, infra, upon re-
of that case by this Court. Since the
ist was no longer available in 1964,
a stipulation regarding its contests
t possible, and since the true figures
list could so readily be estimated,
aterial is not in this record.

The Minute Docket for the Union County Board of Commissioners shows that on June 5, 1961, the jury list was presented to the Board. Under the date of June 23, 1961, the following entry appears:

> "The Board discussed the list of names presented to the Board by the Clerk on June 5, 1961, and after long deliberation the Clerk was authorized to place the names selected in a locked jury box located in the Commissioners' office." (RL 34)

As suggested by the entry, after the Commissioners have completed their work, the jury list is cut into separate strips for each name. (RL 35) Those names deleted by the Board (marked with an "X") are thrown away and those remaining are placed in the jury box. A carbon copy of the original list is retained, absent any markings to indicate which names were not placed in the box. Prior to each term of court thereafter, varying numbers of names are drawn from the box and summoned for jury duty. At each February Term a new grand jury is selected from among those summoned by placing all the strips in a hat and drawing eighteen out.

Contrary to the statutory directive, no new list is made in Union County of the names remaining on the jury list after processing by the Board. Thus, the only direct way to determine whether there is a discriminatory practice followed by the Board is to go through the slips in the jury box. That method was barred here. (See Point IV, infra.) The indirect method utilized here was to compile the results of drawings from the box, which over a period of time will reflect the same percentages as are found in the box.

The grand jury which indicted appellant had a Negro as one of its 18 members. For the four years from 1955 to 1958, no Negroes served on a grand jury. For the three years, 1959 through one Negro appeared on each grand jury.*/

. The Trial Court's Order

respect to the order of the trial Court
g appellant's challenges to his juries,
clear that the findings of fact simply
bear upon the relevant factual issues
by the evidence. For this reason, we
ittle disagreement with the findings.
with respect to findings in paragraphs
5, 6 and 7, we are in accord even though
is no support in the record for the find-
5 that Negroes have served on grand
since 1961.

o the finding in paragraph 1, we simply
hat the trial Judge erred slightly in
ating the percentages from the census
s, and the ratio is 82-18 rather than
Furthermore, the trial Judge, in find-
evidence of what portion of non-white
ers are Negro overlooked the census fig-
howing virtually all non-whites in the
be Negro. Thus, of a total non-white
tion in Union County of 9,578, only 16
her than Negro. 1960 Census publication,
Carolina - General Population Charac-
ics," PC(1), 35B, N/C, page 35-120. Coun
de these figures available to the trial
during the hearing; the trial Judge no-

---

er the selection of the last grand jury
Union County to have no Negroes and be-
e the selection of the first of those
ing one Negro, this Court decided the
e of PERRY v STATE, from Union County,
NC 334, 103 SE 2d 404 (1958). In that
e, this Court reversed a Negro's convic-
n upon the grounds that the trial Court
denied his counsel reasonable opportu-
y to present evidence relating to a Mo-
n to Quash the Indictment because Negroes
e excluded from service on the grand jury

ticed the general "83-17" breakdown set out in his order, but apparently did not notice that the same publication broke down the non-white category also. Since no question was ever raised concerning the percentage of Negroes in the non-white category, counsel proceeded upon the expressed assumption that the 18% non-white figure referred to Negroes for purposes of the hearing. In any event, this Court can take judicial notice of the fact that the non-white population and the Negro population are identical for the purpose of its consideration, e.g., MALLARD v HOUSING AUTHORITY, 221 NC 334, 20 SE 2d 281, even though the trial Judge apparently neglected to do so.

In paragraph 4 there is the only finding which appellant finds it necessary to attack. There is not one iota of evidence to support the finding that on the jury lists "sometimes the designation 'col.' is omitted" from the name of a Negro, and therefore "there is no definite way to distinguish white from Negro from a study of the list." The evidence to the contrary is conclusive. In the tax books from which all males are placed on the jury lists, the County Tax Collector testified that all Negroes are designated as such. (RL 32) The Secretary to the Board of Commissioners testified that racial designations are carried over from tax books to jury lists. (RL 34) She also testified, without qualification, that she could tell from looking at the jury lists what the race of a person was. (RL 36-37) She also testified that the source of female names, voter lists, had racial designations which were carried over onto the lists. (RL 34) Finally, the Assistant Clerk of Court who testified stated that in the Court's Minute Docket the designation "col." after a juror's name meant, from her experience and knowledge, that the person was colored. (RL 35) She later stated, again without qualification, that the designation indicated race, color. (RL 35-36) No one testified as to any instance when a Negro was

ignated as such on the jury list; nor
one testify even that this could con-
y occur.

nly possible evidence which the trial
ould have been considering was testi-
the Assistant Clerk of Court that the
designation after a juror's name in the
Docket is placed there only when a
of jurors is listed. (RL 36) Whenever
's name appears thereafter, as in a
of jurors selected to try a particu-
e, there are no racial designations.
actice, however, has no bearing on the
with respect to jury lists. Further-
he only evidence secured from the Min-
kets was taken from the original list-
persons drawn for jury service, with
ial designations.

ly then, this factual conclusion is not
ed by the record, is subject, therefore,
ew, and must be disregarded. E.G., STATE
ER, 229 NC 67, 47 SE 2d 537 (1948),
es cited therein.

egal conclusions in the trial Court's
re not supported by the valid factual
s of the order, for the evidence relied
appellant is in no way considered in
er. The legal conclusions therefore
irrelevant if appellant did carry his
below, and the order does not shed any
pon whether appellant did so.

C. The Law

eneral constitutional principles with
to discrimination against Negroes in
y selection process are familiar to
urt and have been applied by it in many
See, e.g., STATE v COVINGTON, 258 NC
8 SE 2d 822 (1963). There is no need
re to restate these principles except
eral points of constitutional law par-

ticularly applicable here.

We note initially that in this case appellant is white. This fact is, we submit, quite immaterial. See, generally, THIEL v SOUTHERN PACIFIC CO., 328 US 217, 225 (1946), and on the precise issue here, ALLEN v STATE, 33 Law Week 2044 (Ga. Ct. of App., decided July 7, 1964), which holds that a white, active in Negro voter registration, when tried alone for assault may raise the issue of the exclusion of Negroes from jury service, for if prejudice need be shown (and the THIEL Case demonstrates that it need not), such a white person could show it. See, also, STATE v KORITZ, 227 NC 552, 43 SE 2d 77, reversed 333 US 851, where this Court and the United States Supreme Court reached the merits of a jury challenge for exclusion of Negroes of a white man tried jointly with Negroes. The record in this case establishes that appellant had identified himself with Negroes working in the civil rights movement, a fact which was made known to the jury. (RL 69) Moreover, his co-defendants were Negroes. It might well be that the limitation of Negroes in participation upon juries was even more prejudicial to him as a white Northerner who had come south as a "freedom rider" to participate in the movement than it was to his co-defendants. The State did not controvert the allegation of prejudice to appellant from discrimination against Negroes in selection of jurors and the trial Judge disposed of appellant's motion upon the same grounds as he did those of the other defendants.

Secondly, the evidence shows that this is not a case where Negroes were totally excluded from jury service. Appellant argues rather that the evidence shows that Negroes were systematically limited in number in participation in the jury system.

> "While discriminations worked by consistent exclusions have been rigorously dealt with (citations omitted), variations in propor-

ons of Negroes and whites on jury lists
om racial proportions in the population
ve not been considered violative of the
nstitution where they are explained and
t long continued. (Citations omitted.) Of
urse, token summoning of Negroes for jury
rvice does not comply with equal protection
BROWN v ALLEN, 344 US 443, 471 (1953).

evidence in this case does show a consist-
substantial disparity over a period of
s between the percentage of Negroes in
n County and the percentage on the grand
y. As equally important as the long contin-
disparity was the complete absence of any
anation for it.

here was one Negro upon the eighteen-man
d jury which indicted appellant, as there
been on each of the two previous ones,
e this Court's decision in the Union County
e of PERRY v STATE, 248 NC 334, 103 SE 2d
(1958). Prior to that, there were no Negro
d jurors, at least, as this record shows,
the previous four years. One of eighteen
5.4%; three of 126 is 2.38%. In contrast
these figures, the population percentage of
roes - 18% - applied to grand juries would
d to 3.24 Negroes per jury and 22.68 over
seven-year period. Taking the lower per-
tage of Negroes upon the 1961 jury list
rived at from the tax ledgers adjusted down-
ds) of 12.5% would lead to 2.16 Negroes per
y and 15.75 over the seven-year period.

learly the discrepancy between the actual
ticipation of Negroes in the grand jury
tem and what the population percentage of
roes would, if randomly selected, lead to
substantial and has been consistent for a
iod of years. Moreover, the consistency of
figures involved does not suggest change --
Negroes over a period of years and then, at
time appellant was indicted, one Negro per
nd jury for three years. The PERRY decision
dily presents itself to explain the increase

from zero to one. No attempt was made by the State to explain or rebut this evidence. The opposing evidence was limited to testimony that no discrimination was involved in the preparation of the jury list or in the pulling of names from the box. Significantly, there was no such denial with respect to the Board of Commissioners' winnowing work, which, upon this record, appears to be the obvious point at which Negroes are substantially eliminated from the pool of potential jurors. In any event, a disproportionately low number of Negroes upon a jury raises questions requiring answers. "And mere assertions of public officials that there has not been discrimination will not suffice." REECE v GEORGIA, 350 US 85, 88 (1955).

Thirdly, the use of racial designations at all stages of the jury selection process is probably constitutionally impermissible in itself and when taken with the disparity between the percentage of Negroes on the jury list and that selected for duty certainly established a prima facie case of discrimination. Thus, the United States Supreme Court has found that the use of racial designations upon jury lists, without statutory authorization, by Jury Commissioners constitutes a prima facie case of discrimination. AVERY v GEORGIA, 345 US 559, 562 (1953). As the Court there said, "Obviously that practice makes it easier for those to discriminate who are of a mind to discriminate." (Ibid.) It is not necessary in such a case "to prove some particular act of discrimination by some particular officer responsible for the selection of the jury." (Ibid.)

The Supreme Court later said of its AVERY decision that "it was the system of selection and the resulting danger of abuse which was struck down in AVERY and not an actual showing of discrimination on the basis of comparative numbers of Negroes and whites on the jury list." WILLIAMS v GEORGIA, 349 US 375, 382 (1955). Indeed, in the WILLIAMS Case, the Supreme Court treated the use of racial designa-

s a denial of equal protection in it-
id not discuss any other facts relative
issue, and its opinion then goes on to
ue of whether it was precluded from
g the violation of constitutional rights
the decision by the Georgia Supreme
ested on an adequate State ground. See,
UBANKS v LOUISIANA, 356 US 548; NORRIS
MA, 294 US 587; STATE v SPELLER, 229 NC
SE 2d 537 (1948).

appellant established a prima facie
discrimination against Negroes in the
ing of the grand jury which indicted
the State failed to rebut or explain
ts shown, the trial Judge erred in de-
ppellant's Motion to Quash the Indict-
on this ground.

II

RIAL COURT ERRED IN DENYING APPELLANT'S
ENGE TO THE ARRAY AND MOTION TO DIS-
E THE PANEL.

ion #6, Assignment of Error #6.)

A. The Facts

the trial jury panel was selected from
3 jury list, still in existence at the
the hearing, and because of the two and
f-year gap between indictment and trial,
nal facts were available upon this mo-
onsequently, the motions were handled
ely. All of the foregoing evidence was
rated into the trial jury hearing, and
lowing additional evidence was presented.

963 jury list contains the names of
males, of whom 1,370 are Negroes, (RL
prising 13% of the total. The list con-
he names of 2,653 females, of whom 137
roes, comprising 5% of the total. In
list has 12,949 names, of whom 1,507
roes, comprising 11.6% of the total.

This list was compiled by taking the males registered to pay taxes and the females registered to vote. These sources and the lists themselves, and the Court's minute docket, contains racial designations for the persons named as potential or actual jurors.

The docket entries in the Board of Commissioners' Minute Docket relative to their receipt and winnowing of the jury list are as follows:

> June 3, 1963. "The Clerk presented the Board with a sheaf of papers containing hundreds of names, from which a jury list will be selected by the Commissioners. The lists presented contained the names of every woman registered and filed with the Board of Elections as of May 13, 1963, and every man whose names appears on the tax scrolls of Union County. The Clerk was requested to read to the Board a list of those persons exempted from jury duty." (RL 37)
>
> June 12, 1963. "When it was determined that each member of the Board had reviewed each and every list of names, which was first presented to said Board on June 3, 1963, the Clerk was authorized to place the names selected in a locked jury list box located in the Commissioners' office." (RL 37-38)
>
> After the winnowing of the jury list by the Commissioners, the remaining names were placed in the jury box. The names subsequently drawn from the jury box prior to each term of court are, of course, shown by the Court's Minute Docket, with racial designations, and were placed into evidence by stipulation.

From the October 1959 through the February 1964 terms of Court, 764 names were recorded as drawn from the jury box, of which 40 were Negroes, comprising 5.2% of the total. (RL 38-39) In February, 1964, 10 of the 116 names drawn, or 8.6%, were Negroes; if this drawing

ated from the previous totals, the
re thirty Negroes of 648 names, or
aking the figures down into drawings
various jury boxes based upon differ-
lists, the results are that of the
s shown as drawn from November, 1959,
ay, 1961, i.e., from the jury list
to the Board in June, 1959, twelve,
were Negroes. From the drawings based
1961 list, August 1961 through May
of 326 jurors drawn, or 4.6%, were
From the 1963 list, at the time of
's trial, 72 jurors had previously
n, of whom two, or 2.7%, were Negroes.
bruary 1964 Term of Court, 10 of 116
awn, or 8.6%, were Negroes. Of the
57 persons from which appellant's jury
, 6 or 10.5% were Negroes. (RL 39)
s served on appellant's jury as all
es on the panel were excused for
the Court or challenged peremptorily
licitor.

B. The Law

1963 list as submitted to the Commis-
1.6% of those listed were Negroes. On
specially called to try appellant,
e Negroes. Previous drawings at ear-
s of Court from the box had resulted
representation of Negroes. All draw-
the box based on the 1963 list led
epresentation of Negroes. For the
s until the time of appellant's trial,
hose drawn were Negroes. It is note-
at in this period the highest number
s on a panel was 4, which occurred
ile none had appeared on 5 occasions.
representation on the panel from
ellant's jury was selected was based
esence of six Negroes, an unprece-
mber.

ettled law that little significance
to a relatively great number of Negro

jurors on a particular trial panel when the over-all picture is clearly one of far less participation by Negroes in the jury system. Thus, in KORITZ v NORTH CAROLINA, 333 US 851 (1948), reversing 227 NC 552, 43 SE 2d 77, the petitioner's trial jury had five Negroes on it, or 41.7%, and only 17% of the eligible jurors in the population were Negro. Nevertheless, the United States Supreme Court reversed convictions in a PER CURIAM opinion because of the otherwise plain demonstrations of limitation upon participation by Negroes in the jury system. See, also, e.g., COLLINS v WALKER, 329 F. 2d 100 (C.A. 5, 1964), a case from Louisiana. Consequently, it is not possible to call an unprecedented number of Negroes for jury service on a case where it is known that a challenge to the jury system will occur, as happened here, and thereby insulate the system from attack. Such a device remains discriminatory and does not affect the general system.

Thus, while a list which was 11.6% Negro went to the Board of Commissioners in 1963, drawings from that list at the time of the hearing, including the relatively high number of Negroes upon appellant's special panel, were 6.3%. For the 1961 list, the comparable figures were 12.5% and 4.6%. From the 1959 list, the drawings were 5.2% Negro, which, coincidentally, is the same percentage as those drawn from October, 1959, to appellant's special trial panel.

The inference from the evidence clearly must be that the Board of Commissioners exercises its discretion in a manner which has discriminatory results. The evidence leading to this inference was not explained, qualified or rebutted in any fashion. We submit that with the use of racial designations permeating the entire selection system and with a wholly consistent, substantial discrepancy between the jury list figures and those eventually drawn as jurors, appellant has established a prima facie case of discrimination under the authoriset out in Point II, supra.

IV
THE EVIDENCE IN SUPPORT OF APPELLANT'S
LLENGES TO THE JURY SYSTEM IS NOT CON-
ERED AS ESTABLISHING A PRIMA FACIE CASE
DISCRIMINATION IN SELECTION OF JURORS,
N THE TRIAL COURT ERRED IN PREVENTING
ELLANT FROM PRODUCING EVIDENCE WHICH
LD HAVE DIRECTLY PROVEN SUCH DISCRIMINA-
N.

ption #7, Assignment of Error #7.)

is beyond cavil that a trial court must
counsel reasonable opportunity to offer
nce in support of constitutional chal-
s to the jury system. CARTER v TEXAS,
S 442 (1900); STATE v PERRY, 248 NC 334,
E 2d 404 (1958); STATE v COVINGTON, su-
A hearing is obviously required upon al-
ions of discrimination aptly made, and
earing must be full enough to allow pre-
tion of relevant, necessary proof. More-
upon issues such as this, most of the
ant evidence is to be found in official
ds, some of it open to the public and
not. The granting of a hearing but the
al of access to records directly bearing
the jury system process would be a promise
e ear broken to the hope.

ce the evidence shows a substantial dis-
ncy between the percentage of Negroes on
ury lists presented to the Board of Com-
oners and the percentage of Negroes drawn
the jury box, and since the Board per-
a winnowing process based partly upon
evaluation of the morality and intelli-
or the citizens on the jury list - a
subjective process - it became critical
pellant's presentation of proof to show
percentage of Negroes remained on the
ist after the Board of Commissioners de-
names. If, for example, the percentage

of Negro males placed in the box had been reduced from the 13% on the list to about 4% in the box by eliminating 1,000 names of males, all of them Negroes, then the focus of appellant's argument would be crystal clear. We could plainly point to the discriminatory actions in the jury selection system in Union County. While such pointing is not necessary, AVERY v GEORGIA, supra, the persuasiveness of such proof is clear. Absent opportunity to examine the jury box, appellant has been forced to rely on less direct evidence.

If this Court determines that appellant did not carry his burden of establishing a prima facie case, then it must be concluded that the trial Court erred in preventing appellant from presenting the only evidence which would have directly shown the discriminatory practices involved.

As the record here demonstrates, appellant's counsel requested leave to examine the jury box and suggested several ways this could be done without imposing upon the Court's time. (RL 30-31) Counsel further explained the relevance of the contents of the jury box in his chain of proof. (RL 31) The trial Judge precluded counsel from examining the contents of the jury box on the grounds that "Any entry into the jury box is unauthorized except for the purpose of purging it completely ... or drawing a jury ..." (RL 31)

At least since 1904, counsel have been examining jury boxes in North Carolina to present evidence in challenges to the jury selection system (STATE v DANIELS, 134 NC 641, 46 SE 743) and continue to do so. STATE v KORITZ, 227 NC 552, 43 SE 2d 77 (1947), reversed 333 US 851. Indeed, the Attorney General of North Carolina has just argued in the United States Supreme Court that counsel must necessarily examine the jury box in order to present a prima facie case of discrimination in jury selection.

set out in Point II, *supra*.

IV

THE EVIDENCE IN SUPPORT OF APPELLANT'S
LLENGES TO THE JURY SYSTEM IS NOT CON-
ERED AS ESTABLISHING A PRIMA FACIE CASE
DISCRIMINATION IN SELECTION OF JURORS,
N THE TRIAL COURT ERRED IN PREVENTING
ELLANT FROM PRODUCING EVIDENCE WHICH
LD HAVE DIRECTLY PROVEN SUCH DISCRIMINA-
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tion #7, Assignment of Error #7.)

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he jury box, and since the Board per-
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ounsel for petitioners desired to do
y could have had the jury box produced,
mes called of those who had served and
race identified or designated. This
t done. Furthermore, counsel for peti-
s could have issued a subpoena and had
ry box brought into Court, the names
scrolls examined and their race iden-
. This has been done (BROWN v ALLEN,
443, 97 L.ed. 469, 73 S.Ct. 397) where
opinion of this Court it appears: 'The
ox was produced in Court, opened, and
l for defendant permitted to examine
rolls.'" Brief of the State of North
na, p. 5, in ARNOLD & DIXON v NORTH
NA, 376 US 773 (1964), reversing 258
, 129 SE 2d 229.

n be no doubt that the trial Judge
stating that he lacked authority to
unsel, under whatever safeguards he
ecessary, access to the jury box.

ld be ironical and unjust to determine
sent direct proof that discrimination
t a specific stage of the selection of
a prima facie case of discrimination
been made, and then determine that
may not have access to the only source
nce that can objectively and directly
ate the discrimination that the evi-
rongly suggests has taken place. Ab-
e compelling reason to preclude ac-
the evidence, there is no justifica-
the trial Judge's ruling. There is in
reason to preclude a judicially super-
spection of the jury box and, to the
, the North Carolina practice is to
ch inspection when necessary.

mit that the trial Judge plainly erred
ng to appellant's counsel access to
box under the circumstances of this

POINT V

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A BILL OF PARTICULARS.

(Exception #3, Assignment of Error #3.)

A motion for a bill of particulars in a criminal case seeks only to ferret out information which is not required to be set forth in the indictment. GS 15-143 reads as follows:

> "In all indictments when further information not required to be set out therein is desirable for the better defense of the accused, the court, upon motion, may, in its discretion, require the solicitor to furnish a bill of particulars of such matters."

In this case, the stark nature of the indictments makes such a bill a requisite for an intelligent preparation of appellant's defense.

In April, 1962, all defendants served upon the Solicitor a notice of motion applying for, among other things, an order permitting them to inspect the grand jury minutes and for a bill of particulars as to the charges against each individual defendant. (RM 47-48) This motion was accompanied by an affidavit of a former attorney for defendants, a portion of which was devoted to the demand for a bill of particulars. (RM 50) At a hearing on these motions on May 7, 1962, before Judge Robert M. Gambill, defendants' counsel were informed by the Court that there were no minutes of the grand jury. (RM 56) As far as the motion for a bill of particulars was concerned, Judge Gambill stated that this and other motions could be renewed later. (RM 56, 67-68) When appellant attempted to submit a certified transcript of the hearing before Judge Gambill to the trial Court, he refused to permit such submission and overruled the renewed motion for a bill of particulars. (RL 18-19)

A motion for a bill of particulars is ad-

to the sound discretion of the trial
STATE v FLOWERS, 244 NC 77, 92 SE 2d
56); STATE v SCALES, 242 NC 400, 87 SE
(1955). Where the trial Court is imbued
scretion in deciding a motion for a
particulars, abuse of that discretion
sole reason for reversing the trial
STATE v S.A.L. R. CO., 149 NC 508, 62
(1908).

is a clear case of such abuse. The
udge denied the motion for a bill of
lars SOLELY because, in his opinion, it
ed too late (RL 19) and not for lack
udice to defendant as was the case in
D, supra. As has been indicated, coun-
appellant unsuccessfully referred the
udge of the February 1964 Term to a
ed transcript of a hearing in May of
relevant and material to the issue of
eliness of the motion for a bill of
lars. (RL 18-19)

ut-of-hand refusal of the trial Judge
the May 1962 certified transcript at
e the renewed motion for a bill of par-
s was heard (February 19, 1964) is
an abuse of his discretion. If, as is
ed by appellant, the Court in May 1962
appellant's counsel TO RENEW his motion
ill of particulars at another time,
ere could be no question but that ap-
's motion was timely. The Court in Feb-
964, however, refused to read and in-
e the transcript of May, 1962, in or-
determine the validity of such conten-

ld that the Court's action in February,
s NOT an abuse of discretion would be
unt to the total emasculation of the
ability and reliability of the judicial
f the government. Parties in North
courts would no longer be able to rely
udge's orders and advice because of
inct possibility that ANOTHER JUDGE AT

ANOTHER DATE ON THE SAME JUDICIAL LEVEL could negate the force and effect of the prior orders and advice. To allow a Judge to refuse to make the most minimal search of a specific transcript under the rubric of "discretion" is to allow unpredictability and unreliability to become the wellsprings of the judicial system.

But, in any event, it has been the practice of courts in this State to be liberal insofar as the granting of motions for bills of particulars in criminal cases. In TOWNSEND v WILLIAMS, 117 NC 330 (1895), this Court said:

> "While it is discretionary, we think such motions (for bills of particulars) should be liberally allowed by trial courts when made in time to avoid any delay in the trial unless clearly useless or merely for the purposes of annoyance." (P. 337)

See, also, STATE v BRADY, 107 NC 822 (1890).

When one considers that this motion was originally made in May, 1962, the starkness of the language of the indictment, the absence of any grand jury minutes and the policy of this State as enumerated in TOWNSEND, the denial of appellant's motion was clearly an abuse of discretion.

POINT VI

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO QUASH THE INDICTMENT AND IN ARREST OF JUDGMENT ON THE GROUND THE INDICTMENTS WERE INSUFFICIENT TO CHARGE THE OFFENSE OF KIDNAPPING.

(Exceptions 4, 12, Assignment of Error #4.)

It has already been indicated that the indictments against appellant are drawn in the stark language of GS 14-39. The grand jury charges that he "unlawfully, willfully, feloniously and forcibly did kidnap" the purported

It is conceded that the decided cases
jurisdiction hold that such an indict-
sufficient. STATE v HARRISON, 145 NC
TE v GEORGE, 93 NC 567; STATE v GOUGH,
51.

r, this does not preclude appellant
ntaining that the statute and any in-
phrased in its exact terminology are
and uncertain that they (are) viola-
the Sixth and Fourteenth Amendments to
titution of the United States, as well
le I, Section 17 of the Constitution
Carolina. It is axiomatic that crimi-
utes must be so clear that no one can
stand their comport. CRAMP v BOARD OF
NSTRUCTION, 368 US 278. In order to
constitutional requirements of due
a State statute must be sufficiently
in its description of acts, conduct
tions required or forbidden to pre-
he elements of the offense with rea-
certainty. STATE v HILL, 369 P. 2d 365;
PLUS STORE, INC. v HUNTER, 125 SE 2d

instant case, the word "kidnapping,"
a word of legal art, must, at his
e construed by the actor. There are no
hatsoever in the statute as to just
cific conduct is prohibited. It vio-
e most fundamental principles of jus-
raced in the concept of due process of
RICAN SEEDING MACHINERY CO. v KENTUCKY,
50; COLLINS v KENTUCKY, 234 US 634;
NDALL, 133 A. 2d 276.

with the vagueness and indefinite-
he statute and the indictment is the
bility of appellant to ascertain the
the charges against him. Not only
able to obtain a bill of particulars
supra), but there were no minutes of
Jury which indicted him. (RM 56) In
was charged with conduct couched in
language of an unconstitutionally

vague statute and given no reasonable opportunity to ascertain the specific nature of those charges. Nothing could be more violative of due process of law as guaranteed by both the Federal and State Constitutions. WRIGHT v GEORGIA, 370 US 935; CRAMP v BOARD OF PUBLIC INSTRUCTION, supra; G. I. SURPLUS STORE, INC. v HUNTER, supra.

POINT VII

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A SEVERANCE AND A SEPARATE TRIAL.

(Exception #1, Assignment of Error #1.)

Appellant made timely application for a severance and a separate trial. (RL 12-13) In his motion, he cited as his grounds the fact that (1) a joint trial would make it impossible for him to present his defense, and (2) that evidence would be introduced which, while inadmissible against him, would nevertheless be brought to the jury's attention. (RL 12-13) This, of course, proved to be very much the case and the trial Judge spent a major part of his time in the impossible task of instructing the jury to consider evidence as affecting a particular defendant only. See, e.g., RM 223, 226, 227, 236, 237, 238, 239, 240, 248, 250, 252, 264, 265, 272.

Consolidation of criminal cases is controlled by GS 15-152 which provides for such when:

> "... defendants are charged with crimes of the same class and which are so connected in time or place so that evidence at the trial of one of the indictments will be competent and admissible at the trial of the others."

This was, of course, not the case here as the more than fifty admonitions of the Judge to the jury so clearly indicate.

ourt has consistently held that crimi-
s should not be consolidated for trial
h action might prejudice one of the
ts. See STATE v DYER, 239 NC 713; STATE
, 122 NC 344. In STATE v COTTON, 218
a husband and wife were tried together
same homicide. The wife's testimony,
admitted only as to her own criminal
bility, inculpated her husband. This
ld that her testimony was so prejudi-
her co-defendant that, notwithstanding
l Judge's constant admonitions to the
e husband's conviction should be re-
See, also, STATE v CHAPMAN, 221 NC 157.

TE v BONNER, supra, four men were
individually with the murder of anoth-
cases were, as here, consolidated for
he State relied heavily on several
ons which were admitted into evidence
e Judge had instructed the jury to dis-
hem as they pertained to other co-
ts. This Court held that the confes-
re so prejudicial to the non-confess-
ndants that they were entitled to new

a general rule that the question of a
e of defendants who are jointly in-
ests within the sound discretion of
l Judge. 54 ALR 832. But, it is virtu-
hbook law that where confessions are
or where the problem of separating
nce is present, severances should be
anted. PEOPLE v FEOLO, 282 NY 276;
v UNITED STATES, 221 F. 2d 117.

FFER, the Court pointed out that
ury could hardly be expected to return
of not guilty as to
dant and guilty as to another, separ-
s should be granted. Here, as there,
rtually impossible for the jury to
he four co-defendants and limit its
ion of the damaging effects of con-
r firearms to one defendant. And when

one takes into consideration the racial nature of this case and the atmosphere in which it was tried, (RM 234) the certainty of prejudicial confusion is obvious.

POINT VIII

THE TRIAL COURT ERRED IN PERMITTING TESTIMONY CONCERNING RIFLES AND AMMUNITION AND THE EXHIBITION OF SAME TO THE JURY AND IN DENYING APPELLANT'S MOTION FOR A MISTRIAL AFTER EXCLUDING SUCH EVIDENCE AS INCOMPETENT AND INADMISSIBLE.

(Exceptions 13, 14, 15, 16,
Assignments of Error 9, 10.)

Over appellant's strenuous objection, Police Chief A. A. Mauney was permitted to testify that he had found some guns in the attic of a co-defendant's residence. (RL 71) During the Chief's testimony, again over appellant's insistent objection, fifteen high-caliber rifles and more than a thousand rounds of rifle and machine gun ammunition were brought into the courtroom and spread on the floor directly in front of the jury box. (RL 72-73) At this point, members of the jury rose to their feet in order to obtain a better look at the arsenal strewn in front of them.

As the testimony developed it became obvious that the witness could not connect either the rifles or the ammunition with any defendant. (RL 73-74) Finally, the trial Court ruled that neither the firearms nor the ammunition had been connected to any defendant and sustained appellant's objections to their introduction. (RL 74) However, he denied a motion for a mistrial based thereon. (RL 73)

Prior to the trial Court's ruling on the inadmissibility of the rifles and ammunition, there had been considerable testimony concerning guns. (RL 71) At every such instance, appellant strenuously objected but was consist-

erruled. (RL 71-72) In addition, ap-
s objection to testimony Chief Mauney
namite being found in the yard of Rob-
iams and a motion for a mistrial based
inflammatory remarks were overruled.

virtually impossible for an all-white
a community such as Monroe which has
ked by racial strife for many years,
RM 292, 308-9, 326-329) in considering
ed crime which is part and parcel of
ife and which raised the spectre of
between its white and Negro popula-
o adhere to the trial Judge's admoni-
forget that they had ever seen such
ammunition or heard about such dyna-
is is asking too much of any juror, let
rors in Monroe, North Carolina. This
nnot overlook as Judges what it knows
LEGIONS v COMMONWEALTH, 181 Va. 89.

ourt has consistently adhered to the
t the withdrawal of prejudicial evi-
es not of itself cure otherwise revers-
or. In STATE v CHOATE, 228 NC 491, the
dge permitted the Solicitor to offer
to the effect that the defendant had
d other abortions. A day later, he
its withdrawal. On appeal, this Court
t the introduction of evidence of
rimes" was calculated to and did preju-
jurors against the defendant. Such
it ruled, "must have found lodgment
[the jurors'] minds." (P. 500) See,
TE v COTTON (supra).

ewing cases from other jurisdictions,
t concluded that there is no more
type of evidence than that under
here. One year later, the Court's
was made quite clear in STATE v STRICK-
NC 201, which involved the admissi-
a telephone conversation. The Court's
there is especially applicable here:

> "In appraising the effect of incompetent evidence once admitted and afterwards withdrawn, the court will look to the nature of the evidence and its probable influence upon the minds of the jury in reaching a verdict. In some instances, because of the serious character and gravity of the incompetent evidence and the obvious difficulty in erasing it from the mind, the court has held to the opinion that a subsequent withdrawal did not cure the error." (P. 207)

It goes without saying that fifteen high-powered rifles, which included an M-1 (a well-known Army rifle of substantial range and effect) (RM 294), as well as more than a thousand rounds of ammunition, including at least one machine gun belt, (RM 297) under the community circumstances set forth above, cannot reasonably be expected to be forgotten by even dispassionate jurors. Quite the contrary. It would seem that this is exactly the type of evidence this Court had in mind when it spoke of "its probable influence upon the minds of the jury" and "the obvious difficulty in erasing it from the mind." STATE v STRICKLAND, supra.

In fact, it would be difficult to imagine any more inflammatory evidence than that offered below. In STATE v McCLAIN, 240 NC 171, evidence calculated to prove that a defendant accused of prostitution was also a thief was characterized by this Court as "calculated to inflame the minds of the jurors against her and to preclude that calm and impartial consideration of her case to which she was entitled." (P. 177) How much more serious are deadly guns and ammunition!

In STATE v FRIZZELLE, 254 NC 457, hearsay evidence was introduced in an effort to prove that the defendant was intoxicated and thus impeach his credibility. The trial Judge subsequently withdrew the evidence in his charge to the jury. In reversing defendant's convic-

s Court stated that "it is true that
t sought to withdraw it, but it had
been impressed on the minds of the
S PREJUDICIAL ERROR WAS NOT SUBJECT
CTION." (Capitalization supplied. (P.

ess in STATE v GAVIN, 232 NC 323, an-
ortion prosecution, testified that she
that defendant had performed two other
operations. "We are convinced," the
id, "THAT THE PREJUDICIAL EFFECT OF
MPETENT EVIDENCE WAS NOT REMOVED FROM
S OF THE JURORS BY THE STATEMENT OF
L JUDGE THAT HE WAS GOING TO 'STRIKE'
S DIRECTION NOT TO CONSIDER IT." (Cap-
ion supplied.) (P. 324) The Court went
phasize that a further reference to
mpetent evidence no matter how indi-
ter it had been withdrawn served to
prejudicial inadmissible testimony in
s of the jury. In this connection, the
attention is respectfully referred to
uney's stricken testimony about "dyna-
mediately after the guns and ammunition
ordered inadmissible. (RL 75)

is not urging the proposition that
missible evidence that is eventually
is reversible error. If this were so,
could ever correct himself and this
held to the contrary. STATE v STEW-
NC 340, 345. It is only when the na-
he evidence is such that its effect
ry cannot be eradicated by a simple
on to disregard it that the rule of
Case comes into play. It is impos-
to come to the conclusion that the
nd the ammunition did not find erad-
dgment" in the minds of the jurors.

and ammunition were the obvious high
he State's case. Chief Mauney was the
ss called on its direct case and he
ted for the sole and exclusive pur-
ocking and frightening the jurors

with his lethal arsenal of guns and ammunition and the added fillip of a yard-full of explosives. (RL 75) He was reserved for the last in order to insure that the shock value of his testimony would be uppermost in the jurors' minds when they shortly began their deliberations. Nothing could have been more illustrative of this effect than the sight of the entire jury standing up so that it could see the terroristic exhibits more clearly.

POINT IX

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTIONS FOR CHANGE OF VENUE, MISTRIAL OR CONTINUANCE BECAUSE OF ADVERSE LOCAL PUBLICITY.

(Exceptions 8, 9, 10, Assignment of Error #8.)

As has been indicated supra, the newspapers of Charlotte and Monroe had a field day during the trial of this case. While the jury was being selected, the MONROE ENQUIRER, on page 2 of its issue of February 20, 1964, ran a story which it claimed had been run earlier in the WINSTON-SALEM TWIN CITY SENTINEL. (RL 45) The story, in substance, alleged that "Reds" had "adopted" the "Monroe Case." (RL 45) The case was, the newspaper said, to be used throughout the world for propaganda purposes. Gus Hall and Benjamin Davis, two top-ranking American Communists, were to come to Monroe to "direct ... the world propaganda machinery." A Communist reporter was allegedly already present in Monroe "getting Communist-type propaganda ready for his stories." (RL 45-48)

This story was run immediately adjacent to the continuation of one concerning the selection of eleven jurors for appellant's trial. In this juxtaposition, it could not but have been seen by the passed jurors who could be expected to read avidly a story in which they were prominently mentioned. In fact, three of the passed jurors admitted that they had read y concerning the trial and one the ar- out alleged Communist connection with . (RL 54) Although they maintained thing else in that issue of the ENQUIRER them as to the guilt or innocence of endants, (RL 54) this Court must analyze fession in the light of its knowledge nature.

evening of February 19, 1964, the E NEWS, by its own claim the largest newspaper in the Carolinas, (RL 48) d a by-lined article from Monroe which with the shocking assertion that "lead- bers of the Communist Party of the States are here for the trial of four charged with kidnapping a white couple " (RL 48) It also indicated that "in- n the case is militant Negro Robert , also charged with kidnapping. Wil- ed to Cuba with his family." (RL 49) sing shot, appellants were accused of motions designed "to delay proceedings."

mbers of the jury admitted, under ing by the Court below, that they had article in question. (RL 54) Although d juror indicated that anything he had either newspaper would prevent him from an impartial verdict, it is obvious usations of Communist connection are strong and much too prejudicial to be y routine judicial interrogation, and or appellant so indicated to the trial M 151)

ld also be borne in mind that two of passed jurors regularly had the NEWS in their homes and five the UIRER. It stands to reason that, ing that only the number indicated above ffending issue of either newspaper, ents were more likely than not brought ttention. The effect of sudden celeb- t be disregarded by this Court.

After the selection of the jury had been completed, the CHARLOTTE OBSERVER joined the fray. In its issue of February 21, 1964, it published a front-page report that the DAILY WORKER, which it characterized as "a newspaper published by the United States Communist Party," was reporting this case. (RL 55) It followed this story with an editorial in its edition of Sunday, February 23, 1964, which reminded its large circulation that the "Communist newspaper, the WORKER, [has] expressed interest in the case." (RL 56)

Although the trial Court denied all of appellant's motions based on this highly inflammatory and prejudicial publicity, (RL 39, 53, 57) he himself was apparently influenced by it. In later commandeering eighteen books entitled "Marxist-Leninist Quarterly," he stated that he was doing so "in view of the nature of the trial in progress." (RM 280) At this time, appellant objected strongly to such action as furthering the communist flavor to the trial which had been supplied by the newspaper articles referred to above. (RM 280)

This Court cannot close its eyes to the effect of adding the issue of world and domestic communism to that of integration in a deep South community. Recently, a Federal District Court has seen fit to issue a writ of habeas corpus with reference to Dr. Sam Shepard, who was convicted of murdering his wife in a suburb of Cleveland, Ohio, in 1951, on the ground, among others, that newspaper publicity had so prejudiced the defense that he had not received a fair trial. (NEW YORK TIMES, June 17, 1964.)

In SHEPHERD v FLORIDA, 341 US 50, the Supreme Court reversed a conviction on the ground that excessive newspaper publicity had prevented a fair trial. It held that the publication by newspapers of a "confession" by a defendant could not have failed to influence jurors who read the story. No confession was ever offered in evidence at the trial, but, as the Court

t was as if such evidence had been
ed.

IG v HARNEY, 331 US 367, the Court
position that the publishing of false
eading facts about a trial reflected
the press than it did on the judicial
However, it stated, in language that
ely applicable to the instant case:

> ivably a plan of reporting a case could
> designed and executed as to poison the
> mind ... or otherwise so disturb the
> te balance in a highly wrought situa-
> s to imperil the fair and orderly func-
> g of the judicial process." (P. 375)

criminal defendant in North Carolina
led to a fair trial by an impartial
ATE v CANIPE, 240 NC 60, then this
nnot disregard the effect of the highly
tory (and untrue) articles published
onroe and Charlotte newspapers during
se of this trial. If they didn't "dis-
delicate balance in a highly wrought
n," CRAIG v HARNEY, supra, then it
difficult to imagine anything that

newspaper accounts thoroughly violated
t's fundamental right to due process
s guaranteed by Article I, Section 17
onstitution of North Carolina, and the
ess Clause of the Fourteenth Amendment.
well settled that where a community
influenced by extensive newspaper
and heated public opinion, an im-
nd indifferent jury is impossible and
pt to force a defendant to trial under
umstances would deprive him of the
l guaranteed by due process of law.
OWD, 366 US 717; JANKO v UNITED STATES,
6.

N v DOWD, supra, a unanimous Court
he conviction for murder of a State

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defendant on the ground that the impartiality of the jurors at his trial had been destroyed by the excessive and hostile publicity given to it by the news media. The principles enunciated there are equally applicable here.

The failure to afford an accused a fair hearing violates even the minimal standards of due process. IN RE OLIVER, 333 US 257; TUNNEY v STATE OF OHIO, 273 US 510. "A fair trial in a fair tribunal is a basic requirement of due process." IN RE MURCHISON, 349 US 133, 136. In the ultimate analysis, only the jury can strip a man of his liberty or his life. In the language of Lord Coke, a juror must be as "indifferent as he stands unsworne." Co. Litt. 155b.

> "His verdict must be based upon the evidence developed at the trial. Cf. THOMPSON v CITY OF LOUISVILLE, 362 US 199, 80 S.Ct. 624, ___ L.ed. 2d 654. This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies. It was so written into our law as early as 1807 by Chief Justice Marshall in 1 BURR'S TRIAL 416 (1807). 'The theory of the law is that a juror who has formed an opinion cannot be impartial.' REYNOLDS v UNITED STATES, 98 US 145, 155, 25 L.ed. 244."
> IRVIN v DOWD, supra, p. 722.

In his concurring opinion in IRVIN v DOWD, supra, Mr. Justice Frankfurter highlights the seriousness of the problem present here when he writes:

> "Of course, I agree with the Court's opinion. But this is, unfortunately, not an isolated case that happened in Evansville, Indiana, nor an atypical miscarriage of justice due to anticipatory trial by newspapers instead of trial in court before a jury.
>
> "More than one student of society has expressed the view that not the least signifi-

est of the quality of a civilization
treatment of those charged with crime,
ularly with offenses which arouse the
ns of a community. One of the rightful
of Western civilization is that the
has the burden of establishing guilt
on the basis of evidence produced in
and under circumstances assuring an
d all the safeguards of a fair proced-
hese rudimentary conditions for deter-
guilt are inevitably wanting if the
hich is to sit in judgment on a fellow
being comes to its task with its mind
icably poisoned against him. How can
le men and women reach a disinterested
t based exclusively on what they heard
rt when, before they entered the jury
heir minds were saturated by press and
for months preceding by matter designed
tablish the guilt of the accused. A
tion so secured obviously constitutes
ial of due process of law in its most
entary conception.

a Term passes without this Court being
tuned to review convictions, had in
throughout the country, in which sub-
ial claims are made that a jury trial
een distorted because of inflammatory
aper accounts -- too often, as in this
with the prosecutor's collaboration --
ing pressures upon potential jurors be-
trial and even during the course of
, thereby making it extremely difficult,
t impossible, to secure a jury capable
king in, free of prepossessions, evi-
submitted in open court. Indeed, such
neous influences, in violation of the
cies guaranteed by our Constitution,
ometimes so powerful that an accused is
d, as a practical matter, to forego
by jury. See STATE OF MARYLAND v BAL-
E RADIO SHOW, 338 US 912, 915, 70 S.Ct.
253, 94 L.ed. 562. For one reason or
er this Court does not undertake to re-

view all such envenomed state prosecutions. But, again and again, such disregard of fundamental fairness is so flagrant that the Court is compelled, as it was only a week ago, to reverse a conviction in which prejudicial newspaper intrusion has poisoned the outcome. JANKO v UNITED STATES, 366 US 716, 81 S.Ct. 1662, 6 L.ed. 2d 846; See, e.g., MARSHALL v UNITED STATES, 360 US 310, 79 S.Ct. 1171, 3 L.ed. 2d 1250. See, also, STROBLE v STATE OF CALIFORNIA, 343 US 181, 198, 72 S.Ct. 599, 607, 96 L.ed. 872 (dissenting opinion); SHEPHERD v STATE OF FLORIDA, 341 US 50, 71 S.Ct. 549, 95 L.ed. 740 (concurring opinion). This Court has not yet decided that the fair administration of criminal justice must be subordinated to another safeguard of our constitutional system - freedom of the press, properly conceived. The Court has not yet decided that, while convictions must be reversed and miscarriages of justice result because the minds of jurors or potential jurors were poisoned, the poisoner is constitutionally protected in plying his trade." (pp. 729-30)

Under the circumstances of this case, it was clear error in violation of appellant's rights under the North Carolina and Federal Constitutions to refuse his request for a change of venue or a mistrial. IRVIN v DOWD; JANKO v UNITED STATES; both supra. The existence of an "inflamed community" of IRVIN v DOWD, supra, which can hardly be challenged by the State, and the devastating nature of the newspaper publicity make it mandatory upon this Court to reverse the judgments below.

POINT X

APPELLANT WAS DEPRIVED OF THE ASSISTANCE OF COUNSEL AT THE EARLIEST POSSIBLE STAGE IN A FELONY CASE IN VIOLATION OF HIS RIGHTS UNDER THE NORTH CAROLINA AND FEDERAL CONSTITUTIONS.

(Exception No. 51 - Appeal No. 438)

lant, then only twenty years old, was
d on August 29, 1961, and was not repre-
by counsel until September 1, 1961. (RM
uring this time, he was interrogated
least seven hours by representatives of
te, and although he repeatedly asked
nsel, none was furnished to him. (RM
6) While he was without counsel, cer-
rported confessions were extracted from
used extensively at his trial. (RL

ssistance of counsel at every stage in
nal proceeding is a fundamental safe-
f liberty protected by the Due Process
of the Fourteenth Amendment. GIDEON v
GHT, 372 US 342, 83 S.Ct. 792. The
o assistance of counsel is also guaran-
Article I, Section 11 of the Constitu-
North Carolina:

ll criminal prosecutions, every person
ed with crime has the right to be in-
d of the accusation and to confront the
ers and witnesses with other testimony,
o have counsel for defense..."

ATE v CHESSON, 228 NC 259, 45 SE 2d 563
STATE v GIBSON, 229 NC 497, 50 SE 2d
d by its statutory law: GS 15-4, ACCUSED
D TO COUNSEL -

y person accused of any crime whatso-
shall be entitled to counsel in all
rs which may be necessary for his de-
."

COBEDO v STATE OF ILLINOIS, 32 L.W. 4605
2, 1964), the United States Supreme
eld that the refusal of the Chicago po-
uring a suspect's interrogation, to
is request to consult with his attorney
hey had failed to warn him of his right
in silent, constituted a denial of his
utional right to counsel and rendered
tement they elicited from him inadmis-

sible in a State prosecution. Appellant testified below that he had, on numerous occasions, asked to see a lawyer (RM 213, 216) and that he had not been informed that anything he said might be used against him. (RM 213)

In writing for the ESCOBEDO majority, Mr. Justice Goldberg put the issue squarely when he stated:

> "We have also learned the companion lesson of history that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system.
>
> "We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment to the Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' GIDEON v WAINWRIGHT, 372 US at 342, and that no statement elicited by the police during the interrogation may be used against him at a criminal trial." (P. 4608)

The importance of this protection becomes

clear where, as here, there is no evi-
inking appellant to any crime without
ported "confessions."

XI

RIAL COURT ERRED IN DENYING APPELLANT'S
ONS FOR JUDGMENT OF NONSUIT AND TO SET
THE VERDICT ON THE GROUND THERE WAS
FFICIENT EVIDENCE CONNECTING HIM WITH
RIME OF KIDNAPPING.

tions 11, 17, Assignment of Error #11.)

rand Jury charged, in the stark language
statute (GS 14-39), that appellant "un-
y, feloniously and forcibly did kidnap
Bruce Stegall against the form of the
in such case made and provided and
the peace and dignity of the State."
The indictment as to Mrs. Stegall was
in identical language. (RL 4) Although
r defendants were mentioned in each and
indictment, there was no allegation of
racy or acting in concert therein. (RL

rder to sustain a charge of kidnapping
ncumbent upon the State to prove that
has been a forcible taking and carrying
detention of the victim. STATE v GOUGH,
351. As the Court there put it:

> we so hold that the word 'kidnap' as
> in G. S. 14-30 means the unlawful tak-
> nd carrying away of a person by force or
> and against his will, or the unlawful
> re and detention of a person by force
> aud and against his will." (P. 356)

at its best, for the State, the evi-
ainst appellant is that he entered the
' car at a time when Mr. Stegall had
left it and Mrs. Stegall was in the
e process of doing so. (RL 59) She
ppellant as saying that "I'll drive

the car on up out of the street." (RL 63) Sheriff Dutton testified that appellant told him that he drove the Stegalls' car out of the road and parked it near the home of one, Robert Williams, (RL 65) and that he had done this to get it out of the street. (RL 66) This was substantially what Agents Jessup (RL 66) and Vanderford (RL 68-70) related.

In short, appellant's sole connection with any purported kidnapping is the moving of this automobile. There is not a shred of evidence in the record below that he played any other part in the events that took place in Boyte Street on the afternoon of August 27, 1961. He did not keep the keys to the car or place it in an inaccessible place. He merely drove it from the center to the side of the street.

It is true that, under the present state of North Carolina law, it is possible to become a principal in the commission of a crime without regard to previous design or confederation. STATE v KELLY, 243 NC 177. In that case, the defendant was driving a car when his passenger asked him to stop the vehicle so that he could "take care" of the driver of a car which was following them. He then shot the latter to death. With a gun which had been previously lying on the car's back seat.

In affirming the conviction, this Court stated that "a person aids, when being present at the time and place, he does some act to render aid to the actual perpetration of the crime, though he takes no direct share in its commission." However, the Court was careful to point out that there had been (1) a common plan between the murderer and the driver to kill anyone who interfered with their plan for "immorality" and (2) that stopping the car was part of this preconceived plan. It also was cognizant of the fact that the defendant had prior knowledge of the presence of the loaded weapon on the car's back seat.

ne instant case, under no circumstances
be said that appellant's alleged act of
g the Stegall car the few feet necessary
k it contributed in any way to their
pping." This was not true of Kelly, whose
ng of his car gave his passenger an op-
ity to use a gun of which both had knowl-
If Mrs. Stegall had been in the car when
ant moved it, or if the moving was in
nner necessary for the initial commis-
f the crime, or if the parking of the
e prevented the escape of the Stegalls,
ome argument that appellant aided and
d would have merit.

E v BIRCHFIELD, 235 NC 410, is helpful
s analysis. In it, this Court stated
he proof of two elements was indispens-
o convict someone in appellant's posture.
fendant has (1) to share criminal intent
) to render assistance in the commission
crime. Here, there is no evidence in
cord whatsoever as to the sharing of
al intent and it cannot be said that ap-
t's act aided the commission of the crime,
did not take place until after the move-
f the car. See STATE v GOUGH, supra, as
"taking and carrying away."

lly, the judgments below are not supported
legal evidence. A judgment of a State
which does not rest on sufficient legal
ce to support it violates the Fourteenth
ent. THOMPSON v LOUISVILLE, 362 US 203;
v LOUISIANA, 368 US 157; TAYLOR v LOUI-
370 US 154. The judgments of conviction
ccordingly be reversed.

CONCLUSION

he last analysis, this case cannot be
ed as a routine criminal prosecution. It
rn in the racial conflict that has grip-
nroe for many years and epitomized the
on that to this day pervades that unhappy

community. If any further proof of the continuation of such an atmosphere were needed, the fact that appellant's lawyers, both of whom are white, were refused service at a lunchroom near the courthouse during the trial (RM 234-235) and that the attorney for his co-defendants was evicted from his motel (RM 235) would suffice. See, also, the testimony of Harry Boyte and James Forman (RM 305-309 and 323-329).

Appellant was indicted for kidnapping, not because he was guilty of any such crime, but simply and solely because he was a white youth engaged in integrationist activities. The use of serious felony charges in order to deter and intimidate those who seek to end racial discrimination is well known. See AELONY v PACE (Middle District of Georgia, November 1, 1963, three-Judge Court). This Court, in considering this appeal, must take this unfortunate fact of contemporary life into consideration.

The effect upon the jury of guns, ammunition, dynamite, and Communism has already been stressed. When you add integration (RL 68) and Negro militancy as personified by Robert Williams, (RL 68, RM 317-320) whose name was woven deep into the fabric of this trial, to the other inflammatory ingredients, you create a situation where conviction is certain no matter what the nature or strength of the evidence. To lose sight of this is to plunge into an abyss of total unreality.

WHEREFORE, it is respectfully urged that, in the light of the points raised herein, this Court reverse appellant's conviction and order his discharge.

Respectfully submitted,

Will M. Kunstler
KUNSTLER, KUNSTLER & KINOY

511 Fifth Avenue,
New York, N.Y. 10017

WALTER B. NIVENS,
235 South Brevard Street,
Charlotte, N. C.

RICHARD J. SCUPI,
600 F Street,
Washington 4, D. C.

ATTORNEYS FOR APPELLANT.

1927

No 437

TWENTIETH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term 1964

****

STATE)
v) **From Union**
JOHN CYRIL LOWRY)

****

DEFENDANT APPELLANT'S REPLY BRIEF

****

No 437 TWENTIETH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term 1964

* * *

STATE)
)
v) From Union
)
JOHN CYRIL LOWRY)

* * *

DEFENDANT APPELLANT'S REPLY BRIEF

* * *

This reply brief is submitted with the consent of Court given at the oral argument on November 4, 1964.

POINT I.

APPELLANT'S MOTION TO QUASH THE INDICTMENTS FOR FAILURE TO GRANT A SPEEDY TRIAL SHOULD HAVE BEEN GRANTED.

(Exception #2, Assignment of Error #2).

The State in its brief asserts that the guarantee of a speedy trial contained in the Sixth Amendment "has not been applied to state practice" (Page 4). This is such a misstatement and distortion of the law that defendant appellant feels compelled to answer it briefly.

None of the cases cited by the State to support its position do so. For example, GAINES v STATE OF WASHINGTON, 277 U S 81,

ained to the issue of public rather than
dy trial. FALKOWSKI v MAYO, 173 F 2d 742,
lved a defective habeas corpus petition
e CHICK v KENTUCKY, 140 F Supp 418, con-
ed a prisoner who was serving a sentence
he state which prevented his trial in
her. The reason for the State's paucity
uthority is obvious when one realizes
almost uniformly both state and federal
ts during the last decade have squarely
ed that speedy trial is an element of due
ess under the Fourteenth Amendment.

SUIT v ELLIS, 282 F 2d 145, 148 (1960)
Fifth Circuit unanimously asserted that
fendant in a state criminal prosecution
the constitutional right under the Sixth
dment to the Constitution of the United
es to a speedy trial." This position was
her enforced in NICKENS v UNITED STATES,
F 2d 808 (1963) when in a lengthy footnote
District of Columbia Circuit considered
e prosecution as follows:

his is not to suggest that delay between
fense and prosecution could not be so op-
essive as to constitute a denial of due
ocess. Cf. Petition of Provoo, supra,
F R D at 202 (citing Supreme Court cases
nding denials of Fourteenth Amendment due
ocess); UNITED STATES v McWILLIAMS, 69 F
pp 812, 814 (D D C 1946) (semble alterna-
ve holding), aff'd. 82 U S App D C 250,
3 F 2d 695 (1947); Note. The Right to a
eedy Trial, 57 Colum. L. Rev. 840, 860-63
957). Federal courts have long recognized
t the Sixth Amendment guarantee of speedy
al is not directly applicable to the
tes nor incorporated in full force by the
rteenth Amendment; however, due process
s protect the state defendant against
ial of speed trial after he had been
icially charged. See MATTOON v RHAY,
F 2d 683, 684-685 (9th Cir 1963)
ctum); UNITED STATES ex rel VON CSEH
AY, 313 F 2d 620, 623 (2d Cir 1963), (dictum),

affirming, 195 F Supp 432, 433-434 (S D
N Y 1961) (dictum); ODELL v BURKE, 281 F 2d
782, 787 (7th Cir) (dictum), cert. denied,
364 U S 875, 81 S Ct 119, 5 L Ed 2d 96
(1960); HASTINGS v McLEOD, 261 F 2d 627
(9th Cir 1958) (per curiam) (dictum);
GERMANY v HUDSPETH, 200 F 2d 15, 18-19
(10th Cir) (dictum). cert. denied, 347 U S
946, 74 S Ct 644, 98 L Ed 1094 (1956); IN
RE SAWYER'S PETITION, 229 F 2d 805, 811-
812 (7th Cir) (dictum), affirming 129 F
Supp 687, 690-693 (D Wis 1955) (dictum),
cert. denied sub non., SAWYER v WISCONSIN,
348 U S 855, 75 S Ct 80, 99 L Ed 674 (1956)
NEW YORK v FAY, 215 F Supp 653, 655 (S D
N Y 1963) (dictum); GORDON v OVERLADE, 143
F Supp 577, 578 (D Ind 1956) (dictum); cf.
SUIT v ELLIS, 282 F 2d 145, 148 (5th Cir
1960) (dictum). The due process standard
as applied in these cases was stated by the
Court of Appeals for the Second Circuit in
the FAY case; 'To establish a violation of
the due process clause (of the Fourteenth
Amendment) appellant must prove that the
delay precluded a fair determination of the
charges against him.' 313 F 2d at 623.
Although it has not been directly decided,
due process may be denied when a formal
charge is delayed for an unreasonably
oppressive and unjustifiable time after
the offense to the prejudice of the accus-
ed; a fugitive or one who had concealed
his wrong-doing could obviously not claim
he was oppressed by delay. REGINA v ROBBINS
1 Cox's C C 114 (Somerset Winter Assizes
1844), is an example of an English court
applying a standard of fundamental fairnes
when charges were not preferred for more
than two years."

In case after case in recent years the ers
while proposition that the speedy trial guar-
antee of the Sixth Amendment was not applica
to state proceedings has been completely de-
stroyed. In MATTOON v RHAY, 313 F 2d 684-685
(1963) the Ninth Circuit said:

has been held that the Fourteenth
ndment does not impose the Sixth
ndment's specific guarantee of speedy
al on the states. But if we were to
d to the contrary, the test would remain
ther in all the circumstances the delay
unreasonable."

the delay between indictment and trial
at case was only seventy-four days, the
did not disturb the conviction.

ODELL v BURKE, 281 F 2d 782/787, cert. de-
364 U S 875, the Seventh Circuit held
a delay of three years and seven months
state prosecution did not offend due
ss because, among other things, the de-
nt was not ready for trial when the case
alled. In addition the state's principal
ss was in India and not amenable to
ss. Neither factor, of course, exists

HASTINGS v McLEOD, 267 F 2d 627, the
in a *per curiam* opinion pointed out
the defendant was tried at the next
ar term of court after his indictment
hat, in any event, he did not demand a
y trial. In this connection see IN RE
R'S PETITION, 229 F 2d 805, cert. denied
nom., SAWYER v BARCZAK, 351 U S 966.

GERMANY v HUDSPETH, 209 F 2d 15, 18-19
efendant had been incarcerated for two
and nine months in a state mental insti-
after his apprehension, and while the
did not find that due process had been
ed by the absence of a trial during
eriod, it did cite with approval
TER v NEW YORK, 319 U S 427, in which
preme Court stated:

> due process clause of the Fourteenth
> dment requires that action by a state
> ugh any of its agencies must be con-

> sistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as 'the law of the land.' Where this requirement has been disregarded in the criminal trial in a state court this court has not hesitated to exercise its jurisdiction to enforce the constitutional guarantee."

See also, HEBERT v LOUISIANA, 272 U S 312, 316; DeJONGE v OREGON, 299 U S 253; and PALKO v CONN., 302 U S 319.

In other recent cases the same point has been made. For example, in NEW YORK v FAY, 215 F Supp 653, 655, the United States District Court for the Southern District of New York held that a ten-month delay did not violate due process. In GORDON v OVERLADE, 143 F Supp 577, 578, the Indiana District Court pointed out that while the delay was a year and nine months it had been partially caused by the defendant's motion for a change of venue and motion for a discharge, both of which had to be heard and determined before trial. See, also, STATE v PROSSER, 309 N Y 353, 358.

In other words, while recognizing the applicability of the due process guarantee where a speedy trial was not granted, the courts considered both the length of the delay and the factors causing it in reaching their determination. Since here the defendant (1) took no steps to delay his trial; (2) took advantage of every opportunity to press for a speedy trial, and (3) was not tried for almost thirty months after his indictment, it would seem that he is more than entitled to the protection of the due process clause of the Fourteenth Amendment.

POINT II.

TRIAL COURT ERRED IN DENYING APPEL-
T'S MOTION TO QUASH THE BILLS OF IN-
TMENT BECAUSE OF AN ILLEGALLY CON-
TUTED GRAND JURY.
Exception #5, Assignment of Error #5).

efendant appellant wishes to eliminate
his brief the reference starting on line
age 21, which begins "See, also, STATE v
Z" and ends on line 19 with the phrase
Negroes."

POINT III.

TRIAL COURT ERRED IN DENYING APPEL-
T'S CHALLENGE TO THE ARRAY AND MOTION
DISCHARGE THE PANEL.
Exception #6, Assignment of Error #6).

fendant appellant wishes to eliminate
his brief the reference starting on line
ge 27, with the words "thus in KORITZ v
CAROLINA" and ending on line 13 with
ord "system." In place of the KORITZ
ion, defendant appellant wishes to sub-
te STATE v BRUNSON, 229 NC 37, 47 SE 2d
n which this Court said that the pres-
of five Negroes had no effect on the
proposition that Negroes had been
matically excluded from jury duty.
dant appellant further wishes to
size that in VIRGINIA STATE BOARD OF
IONS v HAMM, 33 L. W. 3151, the United
s Supreme Court, in a per curiam opin-
affirmed the judgment of a three-judge
d States District Court for the Eastern
ict of Virginia, which held that the
nia statutes requiring separation of
s and Negroes on registration, poll tax,
esidence-certificate lists, and on
sment rolls violate the Fourteenth
ment's Equal Protection Clause. This

case would seem clearly dispositive of the issue before this Court as to the grand and petit jury selection.

Respectfully submitted,

WILLIAM M. KUNSTLER
Kunstler, Kunstler & Kinoy
511 Fifth Avenue
New York, N. Y. 10017

WALTER B. NIVENS
235 South Brevard Street
Charlotte, N. C.

RICHARD J. SCUPI
600 F Street
Washington 4, D. C.

Attorneys for Appellant.

THE FOLLOWING PAGES ARE THE BEST AVAILABLE.

File
Gen
Correspondence

144-60 41st Avenue
Flushing, New York
August 20, 1964

Mr. James Farmer, director
Congress of Racial Equality
38 Park Row
New York 38, N.Y.

Dear Mr. Farmer,

I would like an appointment to see you at your earliest possible convenience to discues my upcoming apeal in the Monroe kidnap case. I may be reached by telephone (afternoons) at the Carver Federal Savings & Loan Association, TW6-4747.

Thank you very much.

Very truly yours,

John C. Lowry

LAW OFFICES
SCUPI AND WITT
600 F STREET, N.W.
WASHINGTON 4, D.C.

RICHARD J. SCUPI
HAL WITT

STERLING 3-3663

SEP 23 1964

September 21, 1964

Carl Rachlin, Esq.
General Counsel
CORE
38 Park Row
New York, N.Y. 10038

Dear Carl:

I am planning to apply for a position with the federal government, with special hopes of being hired by the civil rights section of Justice. In this connection, I would like to use your name as a reference if agreeable with you.

Hope all is going well with National Core. Keep up the good work.

Cordially,

Richard Scupi
Richard Scupi

RS:hb

f/u ~~9/29~~ 10/2

September 23, 1964

Richard J. Scupi, Esq.
600 F Street, N. W.
Washington 4, D. C.

Dear Dick:

I will be pleased to be a reference for you with the Justice Department.

Please let me know what you would like from us on the Lowry Case by way of memo, etc.

Regards,

Carl Rachlin
General Counsel

CR:ap

Write Dunlay– How [illegible] pl. [illegible]
[illegible] Lowry & [illegible] do [illegible]
us to do? [illegible] date set
for argu– ?

KUNSTLER & KUNSTLER
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK 17, N. Y.
MURRAY HILL 2-8317

WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER

CABLE ADDRESS
"KANDKLEX"

SEP 28 REC'D

September 25, 1964

Mr. John Lowry
144-60 41st Avenue
Flushing, New York

Dear John:

Pursuant to our discussion yesterday, Dick Scupi and this firm will complete the brief in the above matter. It is our understanding that the appeal to the North Carolina Supreme Court will budgeted at $2,500.00, to include all costs and fees and that the latter will be split equally between this office and Scupi & Witt.

This will also acknowledge receipt of $106.00 in checks made payable to Southern Christian Leadership Conference and which have been forwarded to that organization for issuance of an exchange check for us to cover the disbursements made by us for preparing the record.

Because Mr. Rachlin will be in charge of the fund-raising aspects of this appeal, I am sending a copy of this letter to him. We also understand that, if necessary, he will assist us with reference to any necessary research.

Cordially yours,

William M. Kunstler

WMK:bkf
cc: Carl Rachlin, Esq.
Richard Scupi, Esq.

copy to Lowry + Scupi

Dear Bill
I have your letter to John
The figure $2500 surprises me in
light of the conversations I have

had visit Dick Scupi and John
I understand the outside amount that
will be needed is $500.00

10/13

October 5, 1964

Richard J. Scupi, Esq.
600 F Street, N.W.
Washington 4, D.C.

Dear Dick:

I was wondering how you are getting along with Lowry. Is there anything you want us to do? Is there a date set for the argument?

I'd appreciate hearing from you.

Cordially,

Carl Rachlin
General Counsel

CR:hdl

LAW OFFICES
SCUPI AND WITT
600 F STREET, N.W.
WASHINGTON 4, D.C.

RICHARD J. SCUPI
HAL WITT

STERLING 3-3663

OCT 7 1964

October 6, 1964

Carl Rachlin, Esq.
General Counsel
CORE
38 Park Row
New York 38, New York

Dear Carl:

As you probably already know, John Lowry finally decided to leave his case in Bill Kunstler's office. From my knowledge of John, I had suspected that this would be his decision when it came time to talk to Bill, and for this reason I had delayed doing any real work on the brief on the basis of our conversation until John had clearly made up his mind. I am writing part of the brief for Bill, and while somewhat rushed, it looks as if work on it at Bill's end is going smoothly.

I have now applied for a position with the Civil Rights Division and am awaiting word from them. Somebody from the division will, I hope, be in touch with you shortly.

Cordially,
Dick
Richard Scupi

RS:hb

10/24

October 14, 1964

Richard J. Scupi, Esq.
600 F Street, N.W.
Washington 4, D.C.

Dear Dick,

Naturally, I am pleased to assist you in any way I can with the Civil Rights Division.

I must confess to a certain amount of disturbance at your news concerning Lowry. Not very long ago Lowry called me at home and at some length advised me he had decided to go ahead with you and I was pleased to hear this and, in fact, told him I would obtain for you any assistance that you wanted. My letter of October 5 is in line with that conversation.

Are you able to enlighten me?

Sincerely,

Carl Rachlin
General Counsel

CR:hdl

10/24

October 15, 1964

William M. Kunstler, Esq.
511 Fifth Avenue
New York 17, N.Y.

Dear Bill,

I have your letter to John Lowry. The figure of $2,500 mystifies me in light of the conversations I have had with Dick Scupi and John.

I understand the outside amount that will be needed is $500.

I hope to hear from you soon.

Sincerely,

Carl Rachlin
General Counsel

cc: Richard Scupi, Esq.
Mr. John Lowry

Lowry

OCT 19 1964

LAW OFFICES
SCUPI AND WITT
600 F STREET, N.W.
WASHINGTON 4, D.C.

RICHARD J. SCUPI
HAL WITT

STERLING 3-3663

October 16, 1964

Carl Rachlin, Esq.
General Counsel
CORE
38 Park Row
New York 38, New York

Dear Carl:

I can understand your confusion as to the game of musical chairs that John Lowry sought to initiate. Let me say that I know John well enough, and have worked enough with Bill, to have expected John's anxiety and know that Bill would eventually allay it enough to maintain the status quo. Therefore I was somewhat unwilling to play, which accounted for what you may have considered a peculiar attitude on my part in our discussion.

The best I can do to enlighten you is to say that on September 29, Bill called me, said that John was in his office, and, jocularly, that he understood I was trying to steal the case out of his office. The result of this conversation -- during which I spoke to John also -- was that John had decided to keep his appeal in Bill's office and that Bill wanted my assistance. For my own reasons, I had the responsibility for future work spelled out in precise terms. Subsequently, I wrote three points of the brief and mailed them to Bill, and the entire brief was timely filed earlier this week and the case will be argued late next month.

Prior to September 29, I had frequent conversations with John and others in which John expressed anxiety about his case. I told John to make up his mind what to do and stated alternatives that were open to him. John never did make up his mind apparently, but certainly did express his anxiety to others in strong enough terms to make them assume that he had, or was about to, make up his mind.

I certainly wish the elections were being held today, for who knows what will develop in the next weeks?

Cordially,

Dick

Richard Scupi

RS:hb

Lowry

KUNSTLER KUNSTLER & KINOY
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK, N. Y. 10017
MURRAY HILL 2-8317

WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER
ARTHUR KINOY

CABLE ADDRESS
"KANDKLEX"

OCT 2 0 1964

October 19, 1964

Spoke to
Marvin
Robinson
called [illegible]

Carl Rachlin, Esq.
c/o CORE
38 Park Row
New York, N. Y. 10038

Dear Carl:

This will acknowledge your letter of October 15, 1964.

I don't know what conversations you had with Dick Scupi and John Lowry but, when I was asked about fee and expenses, I set a figure with John of $2,500.00.

However, I did not expect that these funds would come from CORE but were to be raised from private sources. According to my agreement with Dick, all monies, after the payment of expenses, were to be shared equally between us.

The expenses thus far have amounted to $105.80 to the Supreme Court of North Carolina for reproducing the record (repaid by John), $75.00 to the same court for reproducing the brief, and $125.00 for overtime typing. In addition, there will be airplane fares and living expenses for the argument in Raleigh. I would say that $500.00 will just about cover the bare expenses of the appeal.

Whatever share of the expenses CORE is disposed to pay will be gratefully received.

The brief amounted to more than sixty legal-size pages and was served upon the clerk at 4:10 p.m. on October 12, 1964. We feel that it is a good brief with significant reversible error on both state and federal grounds. As soon as it has been reproduced in Raleigh, I will get a copy to you.

We would appreciate your prompt attention to the question of the expense funds as we have large amounts of money committed on similar cases and are trying to put it back into circulation.

Cordially,

Bill

William M. Kunstler

WMK:bkf
cc: John Lowry & Richard Scupi

October 27, 1964

William Kunstler, Esq.
511 Fifth Avenue
New York, N.Y. 10017

Dear Bill,

Re: John Lowry

Thank you for your letter of the 19th. We, of course, will stand by our understanding to help raise the actual expenses for John's appeal. We cannot, as you will understand, pay any legal fees. Our budget just will not permit that.

If from other sources less than $500.00 is raised, we will make up the balance. This is the best I can do, and I have so advised John. In no way is this in derogation of your efforts or those of Dick Scupi, but simply a recognition of our limited means.

With kindest regards,

Carl Rachlin
General Counsel

cc: Richard Scupi, Esq.
Mr. John Lowry

CR:hdl

SEDFRE

M^c PHERSON, ROBERT VS. NEWYORK 1966
(DISTURBING the PEACE)

Accounts, 1920

Box 35
Folder 9

State Historical Society Of Wisconsin

Please Retain Original Order

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: Part 1C

66 Civ 1104

C 5228 1966

---------------------------------------X
PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

ROBERT MC PHERSON,

Defendant.
---------------------------------------X

TO: FRANK S. HOGAN,
District Attorney
New York County
155 Leonard Street
New York, New York

CLERK OF THE CRIMINAL COURT
City of New York
County of New York
100 Centre Street
New York, New York

SIRS:

PLEASE TAKE NOTICE, that a verified petition for the removal of the above entitled action from the Criminal Court of the City of New York, County of New York, to the United States District Court, for the Southern District of New York, pursuant to provisions of Section 1443, Sub-Division 2, Section 1446 et seq. of Tital 28, United States Code, a copy of which is annexed hereto was duly filed this day in the United States District Court for the Southern District of New York at the United States Court House at Foley Square in the Borough of Manhattan, City and State of New Yrk

Dated: New York, New York

April 19, 1966

Yours, etc.,

JOHN E. SILVERBERG
Attorney for Defendant
Office & P. O. Address
15 Park Row
New York, New York 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
ROBERT MC PHERSON,

Petitioner,

- against -

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.
---X

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of the above named petitioner by JOHN E. SILVERBERG, his attorney, respectfully shows upon information and belief:

1. On March 30, 1966 your petitioner was arrested by police of the City of New York and charged with violating Section 722 of the Penal Law of the State of New York. Your petitioner was released on parole and is awaiting trial in the Criminal Court of the City of New York, County of New York, Part 1C on April 20, 1966.

2. The aforementioned actions taken by the police of the City of New York and the Criminal Court are all in violation of the civil rights of the petitioner herein and said proceedings all are therefore subject to removal to this Court pursuant to the provisions of sub-division 2 of Title 28, United States Code, Section 1443.

3. That these proceedings are pending in Part 1C under Docket No. C5228 1966 of said Criminal Court.

4. That the arrest and prosecution of petitioner violates the Constitution of the United States and the

amendments thereto and the laws of the United States by making criminal, petitioner's effort to secure equal transporation facilities within the City of New York as guaranteed by the United States Constitution and the laws of the United States.

5. That petitioner's color of authority is illustrated by the following:

(a) Petitioner herein entered a taxi cab which was on duty in the Borough of Manhattan, City and State of New York and asked to be taken to a destination in the Bronx.

(b) The cab driver did not wish to take your petitioner who is a Negro to his destination in the Bronx.

(c) The cab driver ordered your petitioner who at all times behaved in an orderly manner to get out of the taxi cab. Your petitioner refused.

(d) The cab driver went to a telephone booth and summoned a patrol car. The police officers would not allow petitioner to tell them what had happened, but ordered petitioner to ~~get into the patrol car and your~~ be JED JED ~~petitioner was~~ taken to the precinct.

(e) At the precinct a Police Lieutenant said to petitioner: "you people think you're running this city, but you're not".

(f) Your petitioner was booked in the precinct and charged with having caused a crowd to collect in the vacinity of the taxi cab and telephone booth where the cab driver had telephoned for the police.

(g) That at all times before and after petitioner's arrest, he behaved in a courteous and orderly manner and was subject to both physical and verbal abuse by the police.

(h) Petitioner was arraigned in the Criminal Court of the City of New York on March 30, 1966 and was charged with having violated Section 722 of the Penal Law of the State of New York.

(i) That the arest and prosecution, petitioner verily believes, have been made with the design of preventing petitioner from enjoying his constitutional rights to equal transporation facilities by means of public taxi cab for hire within the City of New York.

(j) Accordingly, petitioner has been arrested and is being prosecuted for acts committed under color of authority of the United States constitution and the laws of the United States providing for equal rights of all persons.

(K) Annexed hereto and made a part hereof is a copy of statement prepared for the City Commission on Human Rights JES

7. That the conduct of petitioner consisted solely in the peaceful exercise of his right to insist upon equal public transportation within the City of New York and that his arrest and prosecution have infringed and do infringe upon his rights as an American citizen to freedom of speech in demanding his equal rights to public transportation all of which rights are inalienably guaranteed to him by the Constitution and laws of the United States.

8. That no bond with good and sufficient surety is required to be filed herewith since this proceeding is Crii ature.

RE, petitioner prays this case stands removed.

Dated: New York, New York

April 14, 1966

Yours, etc.,

JOHN E. SILVERBERG
Attorney for Petitioner
Office & P. O. Address
15 Park Row
New York, New York 10038

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

JOHN E. SILVERBERG, being duly sworn, deposes and says:

That he is the attorney for the petitioner herein and that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be upon information and belief and as to these matters he believes it to be true.

Sworn to before me this
14 day of April, 1966.

John E. Silverberg

FRED E. SOBEL
NOTARY PUBLIC, State of New York
No. 24-3758750
Qualified in Kings County
Commission Expires March 30, 1967

CITY OF NEW YORK

Commission on Human Rights
on the complaint of

Robert McPherson Complainant

against

Cab driver and policemen,
names unknown Respondent

Complaint No. ____________

Not used
Done over to
make 2 separate
complaints

I, ...Robert McPherson..

residing at .309 W. 136th Streetn New York City, N.Y.................................

charge ..taxi-cab driver (Cab No. 6P 82) and policemen at 19th precinct station

whose address ~~xx~~ es are unknown..

with an unlawful discriminatory practice relating to ..refusing to take...........

....complainant to destination and police brutality,.................................

on or about ..March 29 11:37 P.M...

by ....

because of my RACE (X), COLOR (X), CREED ( ), NATIONAL ORIGIN ( ),
AGE ( ), SEX ( ).

The particulars are:

H-29 (1 of 2)

STATEMENT OF MR. ROBERT MC PHERSON;

On March 29th at 11:37 P.M. he was at 77th Street and Lexington Avenue on the East side of Lexington. He spotted a cab going West on 77th Street, waiting for a light with no off-duty lights on. The cab number was 6P 82. Mr. McPherson crossed to the cab. The cabbie leaned over to lock the door, but Mr. McPherson got it open. He got into the cab. The cab driver asked what he wanted. Mr. McPherson said he wanted to go to work at Leland Avenue in the East Bronx. The driver made a left turn down Lexington Avenue, parked the cab and then said he couldn't take him because he wanted to eat. Mr. McPherson said he would just sit there. The cabbie refused again to take him. Mr. McPherson said he'd report him. Then the cabbie took his identification card out of the holder. Mr. McPherson asked to see it and the driver refused. The cabbie got out and went to a phone booth and made a call. Ten minutes later a patrol car showed up. Mr. McPherson remained in the cab. The cabbie talked to the police, the police came to the cab and asked what was the matter. Then Mr. McPherson got out. When he started to explain, the other policeman told him to "Shut the hell up." A crowd started to gather, so Mr. McPherson got back in the cab. The police asked the cab driver what he wanted to do. The driver said he wanted Mr. McPherson out of the cab since he wanted to eat. The Police told him to take Mr. McPherson to the 19th Precinct Station. They asked the cabbie if he wanted the police car to follow him. The cabbie said yes. Mr. McPherson said to cabbie, "Why not take me where I want to go. You had no off-duty sign on." the cabbie reached down below the meter, turned a switch and said, "I did have the off-duty sign on."

When they got to the Precinct Station, the cabbie went inside. Mr. McPherson stayed in the cab. The Police who had followed yelled from their car, " get out and get another cab." Mr. McPherson didn't reply. The cab driver came out of the Station, went to the police car, then the policeman came out of their car, told Mr. McPherson to get another cab and offered to get it for him. Mr. McPherson refused. The Police and the cabbie discussed what they should do. Then one officer said if Mr. McPherson didn't get out of the cab he would be arrested for disorderly conduct. Mr. McPherson thought about it, then said to the officer, "I'm sorry, officer, I cannot get out of this cab and I'm afraid you'll just have to arrest me." The policeman said, "Then come on," reached and opened the door. Mr. McPherson started to pick up the book and radio lying on the seat, but didn't have a chance to pick up either. He was dragged from the cab. His left arm was twisted, then he was thrown up the stairs and through the door; then thrown in front of the Lieutenant on duty, with the officers still twisting his arm. He asked the policeman to turn him loose and asked was he trying to break his arm? The Policeman said, "I will break it." The Lieutenant asked the cab driver what was the problem. The driver said he was hungry and wanted to eat, that he had been working since 4 P.M. The Lieutenant never asked Mr. McPherson what had happened. The officer told him he was being arrested for disorderly conduct. Mr. McPherson was taken to the back, his name and address secured. The cab driver gave his name and address. Mr. McPherson asked for his license number and name. It was refused. He was taken before the Lieutenant to be searched. The Lieutenant asked the cabbie again what had happened, was told about his hunger again. Mr. McPherson asked the Lieutenant if he might have the cabbie's name and license number. The Lieutenant said, "No, keep quiet; you people are not running this City." Mr. McPherson asked him for his name and that of the arresting officer. The Lieutenant told the Police to remove him from the desk. The cab driver said Mr. McPherson had cursed him. Mr. McPherson said, "Yes, please tell the Lieutenant in what fashion I cursed you." Mr. McPherson quoted that what he had said was, "You white cab drivers have a problem as far as picking up Negroes and it has to be stopped." That was all that was said.

Mr. McPherson was locked up for the night. On the following morning he was taken downtown, put in a cell with junkies, winos and degenerates. He asked the officer for coffee and a roll, but never got any breakfast or lunch. They took him to court at 11:00 A.M. He appeared before the Judge at 1:30 P.M. and was paroled in his own custody. He is to go back to court on April 20th at 9:30 A.M., Part I C. Mr. McPherson was provided with an Attorney from Legal Aid, but didn't get his name.

Mr. McPherson went to the Hack Bureau as soon as he came out of Court and registered complaint no. 66/1893. The investigator was Lieutenant M. Makris. At the Hack Bureau he saw a Lieutenant (not the one in charge), who had seen him at the 19th Precinct the night before.

I am a Negro, I believe that I have been discriminated against because of my color in violation of the laws of the City of New York.

I have not commenced any action, civil, criminal or administrative, based upon the above allegation, other than the following:

....

....

CITY OF NEW YORK) ss.:
COUNTY OF New York)

Robert McPherson
(Signature of Complainant)

Robert McPherson ...., being duly sworn, deposes and says: that ...he... is the Complainant herein; that ...he... has read the foregoing complaint and knows the contents thereof; that the same is true of ...his... own knowledge, except as to the matters therein stated on information and belief; and that as to these matters ...he... believes the same to be true.

Subscribed and sworn to before me

this 11 day of April, 1966

Robert McPherson
(Signature of Complainant)

Term Expires

H-29 (2 of 2)

MADERA, VICTOR et al. VS BOARD of EDUCATION NEW YORK 1967
(SCHOOL CASE)

Box 39
Folder 10

Historical Society of Wisconsin

Please Retain Original Order

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VICTOR MADERA, RAMIRO MADERA,
MANUELA MADERA,

Plaintiffs,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, BERNARD E. DONOVAN AS SUPERINTENDENT OF SCHOOLS OF THE CITY OF NEW YORK, THEREAS RAKOW AS DISTRICT SUPERINTENDENT OF PUBLIC SHOOLS FOR DISTRICT ONE IN THE CITY OF NEW YORK,

Defendants.

CIVIL NO.
635-1967

AMENDED

COMPLAINT

FOR A FIRST CAUSE OF ACTION, PLAINTIFFS ALLEGE:

1. This action arises under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States. Jurisdiction is conferred on this Court under the Fourteenth Amendment to the United States Constitution, sections 1331(a), and 1343 of Title 28 of the United States Code, and sections 1981 and 1983 of Title 42 of the United States Code.

2. This action is brought for declaratory relief pursuant to sections 2201 and 2202 of Title 28 of the United States Code, for further relief under section 1983 of Title 42 of the United States Code, and is brought to obtain a preliminary and permanent injunction against threatened acts by defendants, which will deprive plaintiffs, under color of state law, of rights privileges and immunities secured by the Constitution of the United States, and against the enforcement of certain unconstitutional regulations promulgated and enforced by the defendants herein.

3. Plaintiffs Ramiro Madera and Manuela Madera are

the father and mother respectively of plaintiff Victor Madera, an infant, all of whom are residents of New York County, New York.

4. Defendant Board of Education of the City of New York (hereinafter Board of Education) under the laws of the State is charged with the responsibility of administering the public school system of the City of New York and with carrying out the terms of the New York State Education Law.

5. Defendant Bernard E. Donovan (hereinafter Donovan) is the Superintendent of Public Schools for the City of New York and under the New York State Education Law is charged with implementing the policies set forth by defendant Board of Education.

6. Defendant Theresa Rakow is the District Superintendent of Schools for the First District in the City of New York, within which district is included Junior High School 22, which plaintiff Victor Madera was attending, and under New York State Education Law is charged with implementing the policies set forth by defendant Board of Education within that district.

7. The infant plaintiff has been attending said Junior High School since his admission thereto on or about September, 1966.

8. On or about February 2, 1967, the infant plaintiff was suspended from said Junior High School by order of its Principal.

9. Pursuant to Board of Education regulations, General ✓ Circular 16, 1964-1965, an "Assistant Superintendent's hearing" has been scheduled before defendant Rakow for February 17, 1967 at 10:00 A.M. to determine what further action should be taken

in the infant plaintiff's case.

10. Plaintiff, Ramiro Madera, whose native language is Spanish and who does not read or understand English, was summoned on notice to appear and testify at said hearing.

11. Defendant Board of Education and, on information and belief defendant Donovan, acting pursuant to Education Law, section 2554, subdivision 13 and section 3214, have promulgated an official regulation entitled Board of Education General Circular Number 16 (Exhibit A). This regulation sets forth procedures to be followed in situations involving suspension of pupils. In essence, the regulations provide for a preliminary hearing entitled the "Principal's Hearing" and, for those pupils who are not thereafter reinstated, for a subsequent hearing entitled the "Assistant Superintendent's Hearing."

12. Insofar as the "Principal's Hearing" is concerned, this regulation states that "attorneys seeking to represent the child may not participate."

13. Insofar as the "Assistant Superintendent's Hearing" is concerned, no such explicit prohibition appears in the regulation. Nevertheless, the defendants herein have continuosly interpreted this regulation to prohibit attorneys from representing the pupils and their summoned parents at an "Assistant Superintendent's Hearing," and it has been the custom or usage of the defendants acting under this interpretation to prevent attorneys from representing a pupil and summoned parents at such hearings.

14. The attorney for the plaintiffs, pupil and summoned parents, contacted the defendant Rakow's office to notify

the school authorities that he would appear with the plaintiffs, pupil and summondd parents, at the suspension hearing. The attorney was informed that he would not be permitted to attend the scheduled hearing at which the infant plaintiff's case will be heard.

15. As a result of the scheduled "Assistant Superintendent's Hearing" the infant plaintiff may be suspended from school for an indefinite period of time, may be placed in a "600" school for delinquent children, may be involuntarily incarcerated in an institution, or may be referred for appropriate action to the Family Court.

16. Such customary denial and threatened continued denial of this infant plaintiff's right to be represented by counsel at the "Assistant Superintendent's Hearing" when the consequence may be so severe as to prohibit the infant plaintiff from further attendance at the public school he is attending or to be involuntary incarceration of the infant plaintiff in an institution, is a deprivation of his right to counsel, privilege against self-incrimination and his right to due process under the Fourteenth, Fifth and Sixth Amendements to the Constitution of the United States.

17. Furthermore, on information and belief, when the District Superintendent refers such cases for action to the Family Court, where the pupil is, by law, entitled to be represented by an attorney, testimony taken and evidence gathered against the pupil at this suspension hearing is admissible into evidence in the court proceeding.

18. On information and belief, there is a present action pending in Family Court against the plaintiff, Victor Madera, which was instituted by one of said plaintiff's

teachers, and which is scheduled for trial on the 23th. day of February. The disposition made at the "Assistant Superintendent's Hearing," and testimony taken from and evidence gathered against the plaintiff pupil at said hearing is admissible into evidence against plaintiff in the pending Family Court proceeding.

19. In view of the admissibility of the disposition made at the suspension hearing and testimony taken from the infant plaintiff at these suspension hearings in subsequent Family Court proceedings as a result of which the infant plaintiff may be incarcerated in an institution for a number of years; such customary denail and continued threat of denial, violates the infant plaintiff's privilege against self-incrimination, right to counsel, and right to due process of law guaranteed by the Fourteenth, Fifth and Sixth Amendments to the Constitution of the United States.

20. Pursuant to General Circular 16, within five school days after the suspension of a pupil, the principal must present to the Assistant Superintendent a report of the pupil's acts of misbehavior. On information and belief, said report was sent to the Assistant Superintendent on February 2, 1967 and was received by her on February 6, 1967.

21. Under General Circular Number 16, the Assistant Superintendent must conduct the interview or "administrative" hearing within ten school days after receipt of the report, and a decision must be made within five school days after the administrative hearing. On information and belief, the last day to hold the hearing required therein to be conducted is Tuesday, February 21, 1967.

22. The hearing required to be conducted by February 21, 1967, has not yet been conducted, ~~and~~ no notice has been received by plaintiffs herein that such hearing will be held on such date.

23. Infant plaintiff remains suspended from school ~~as of the morning of February 2, 1967,~~ without the benefit of the hearing required to be conducted by General Circular Number 16.

24. Infant plaintiff, Victor Madera, has suffered and is threatened with serious and irreparable harm and injury by reason of these actions of defendants. He has no plain, adequate or complete remedy to redress these wrongs other than this suit for an injunction. Any other remedy, if such were available, would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, and cause further irreparable injury.

25. Infant plaintiff has made no prior request for the relief requested herein.

26. The irreparable damage done and threatened to be done to the infant plaintiff exceeds $10,000 in amount, exclusive of interest and costs.

27. Unless the plaintiff is immediately reinstated to school and unless the defendants are restrained from preventing the infant plaintiff from bringing legal counsel with him to a suspension hearing, and further restrained from preventing said counsel from performing his task as an attorney, and further restrained from holding any proceedings which may affect the infant plaintiff herein unless his legal counsel is allowed to represent him at such hearing, the infant plaintiff will continue to suffer and will suffer greater irreparable harm, in that

he is and will continue to be deprived of his right to an education, his right to earn a livelihood based on such education, or may be placed in a "600" school, involuntarily incarcerated in a state institution, or as a result of testimony which may be taken from the infant plaintiff in violation of his constitutional privilege against self-incrimination, right to counsel, and right to due process of law may be incarcerated in state training school by the Family Court.

AND FOR A SECOND CAUSE OF ACTION:

28. Plaintiffs, Ramiro Madera, and Manuela Madera, reallege and reaffirm paragraphs one to nineteen.

29. Plaintiff, Manuela Madera, was summoned by notice to appear at the said "Assistant Superintendent's Hearing" to be held on February 17, 1967.

30. The Education Law of the State of New York contains the following provisions:

> §3214 -5(a) "After reasonable notice to a school delinquent and to the person in parental relation to him and an opportunity for them to be heard, a public school official...may, with the consent in writing of the person in parental relation to the school delinquent, order him to attend a special day school or to attend upon instruction under confinement at a parental school or elsewhere...for a period not exceeding two years....(emphasis added)"
>
> §3214-5(c)(1) "If the person in parental relation to a school delinquent refuses to consent in writing to an order that he attend a special day school or parental school, or upon instruction under confinement elsewhere, such person shall be proceeded against for violating the provisions of section thirty-two hundred twelve of this article."

31. Pursuant to the above statutes, the plaintiffs Ramiro Madera and Manuela Madera may, as a direct result of a decision made at said suspension hearing, be required to choose between signing a "consent" enabling the authorities to order the further education of their son, even in an institution, or to face proceedings against them by the defendants herein.

32. Since evidence taken from them and gathered at this suspension hearing may bear directly on whether or not the plaintiffs will be required to choose between allowing their son to be institutionalized or face a charge of neglect in the Family Court, the plaintiffs are entitled to fully participate in said hearing and to be fully represented by legal counsel of their choice.

33. That to deprive the plaintiffs of their right to be represented by counsel at this scheduled suspension hearing is a deprivation of their rights to counsel, privilege against self-incrimination and due process of law under the Sixth, Fifth and Fourteenth Amendments to the Constitution of the United States.

34. Unless the defendants are restrained from preventing the plaintiffs, Manuela Madera and Ramiro Madera, from bringing legal counsel with them to said hearing and all subsequent hearings which affect their interests, and further restrained from preventing said legal counsel from performing his task as an attorney, and further restrained from holding any proceedings at which the plaintiffs' rights may be prejudiced unless they are allowed to be represented by legal counsel at such hearings, the Plaintiffs will suffer and continue to suffer substantial and irreparable harm, in that they may face neglect charges as a direct result of statements made at said hearing.

35. Plaintiffs have made no prior request for the relief requested herein.

36. The irreparable damage done and threatened to be done to the plaintiffs, and each one of them, exceeds $10,000 in amount, exclusive of interest and costs.

WHEREFORE, Plaintiffs pray for the following relief:

A. That a special United States District Court of three judges be convened to hear and determine this action, pursuant to Section 2281 and Section 2284 of Title 28 of the United States Code.

B. That pending the hearing and determination by the full Court of an application for a preliminary injunction, a temporary restraining order be granted, reinstating the infant plaintiff to his school and restraining Defendants from holding any proceedings at which the rights of any of the Plaintiffs may be affected and particularly from conducting the "Assistant Superintendent's Hearing" scheduled for February 17, 1967.

C. That Defendants be perpetually enjoined from preventing the Plaintiffs from bringing legal counsel with them to all suspension hearings affecting them and further enjoined from preventing such legal counsel from performing his task as an attorney, and that pending final determination, there be an interlocutory injunction to that effect.

D. That Defendants be perpetually enjoined from enforcing any regulations which prevent the Plaintiffs from bringing legal counsel with them to all suspense hearings affecting them and further enjoined from enforcing any regulations which prevent such legal counsel from performing his task as an attorney, and that pending final determination, there be an interlocutory injunction to that effect.

E. That insofar as Defendants' actions and regulations deny all persons their rights to be represented by counsel at all suspense hearings affecting, such actions and regulations as declared void and of no effect as violative of the United States

Constitution on the grounds set forth in this complaint.

F. That Plaintiffs be granted such other and further relief as to this Court may seem just and proper.

Yours etc.

HAROLD J. ROTHWAX
ROBERT SUGERMAN, of Counsel
65 East 7th. Street
New York, New York 10003

VERIFICATION

MANUELA MADERA, being duly sworn, deposes and says that she is the complainant in the foregoing complaint, that the same has been read to her in Spanish and that she knows the contents thereof; that the same is true to the knowledge of the Deponent, except as to matters therein stated to be alleged upon information and belief, and as to those matters, she believes them to be true.

MANUELA MADERA

Sworn to before me this
day of February, 1967

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK x

VICTOR MADERA, RAMIRO MADERA,
MANUELA MADERA

Plaintiffs,
-against-

Civil No.

BOARD OF EDUCATION OF THE CITY OF
NEW YORK, BERNARD E. DONOVAN AS
SUPERINTENDENT OF SCHOOLS OF THE
CITY OF NEW YORK, THERESA RASKOW
AS DISTRICT SUPERINTENDENT OF PUBLIC
SCHOOLS FOR DISTRICT ONE IN
THE CITY OF NEW YORK

Affidavit of
translator

x

being duly sworn, deposes and says:

1. That I am a Legal Secretary for the Legal Services Unit of Mobilization for Youth, Inc.

2. That I am fully conversant with the Spanish Language which I read, speak and write fluently. That the plaintiff herein, Manuela Madera, does not speak any other language than Spanish.

3. That I have translated the complaint of the Plaintiff, Manueal Madera, attached hereto, from English to Spanish language, and have read same to her in Spanish, which was then sworn by her.

4. That the Plaintiff, Manuela Madera, has related to me that she fully understands and agrees with all the facts recited in said complaint.

Sworn before me this 21st
day of February, 1967

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

VICTOR MADERA, RAMIRO MADERA, MANUELA :
MADERA,
:
Plaintiffs,
:
-against- : CIVIL NO.
635-1967
BOARD OF EDUCATION OF THE CITY OF NEW :
YORK, BERNARD E. DONOVAN AS SUPERINTENDANT OF SCHOOLS OF THE CITY OF NEW YORK,
THERESA RAKOW AS DISTRICT SUPERINTENDANT OF PUBLIC SCHOOLS FOR DISTRICT ONE :
IN THE CITY OF NEW YORK, :

Defendants. :

- :

ORDER

Upon the affidavits of Manuela Madera, Robert Sugerman, Sue Ann Shay, and the verified complaint, and after notice to Defendants, and J. Lee Rankin, Esq., Peter Flanagan of Counsel, Corporation Counsel for the City of New York, and after oral argument by Counsel for both sides, it is found that unless a temporary restraining order is granted the "Assistant Superintendant's Hearing" scheduled for February 17, 1967 will take place with Plaintiff's Counsel excluded, causing irreparable damage to the Plaintiffs herein.

To Wit:

1) The regulations and the practice of the Board of Education will preclude the presence of Counsel for the minor at this hearing.

2) The parent summoned to appear at the hearing is non-English speaking.

3) At the Friday, February 17 hearing the minor plaintiff will be faced with a list of serious charges, which may result in his suspension, discharge, prolonged medical detention, or other serious sanctions.

4) Evidence given by minor plaintiff at the Friday, February 17 hearing may be introduced against him in a presently pending family court proceeding on his alleged juvenile delinquency.

5) The parents' conduct at this hearing may subject them to serious sanctions in a subsequent family court proceeding.

It is therefore ORDERED that the Defendants, their successors, agents, servants, attorneys, employees, and all persons acting in concert with them be and they hereby are restrained from holding any proceedings at which the rights of any of the Plaintiffs may be affected and particularly, from conducting the "Assistant Superintendant's Hearing" scheduled for February 17, 1967, without permitting Plaintiffs' legal counsel to be present and to perform his task as an attorney.

Further, it is ORDERED that Counsel for both sides appear at 2903, United States Courthouse, Foley Square, on the 21st day of February at 11^{30} A.M., at which time reargument from both sides will be heard on 1) this temporary restraining order and, 2) on plaintiff's application for this court to notify the Chief Judge that this is a case requiring a statutory three-judge court.

It is further ORDERED that the plaintiff's undertaking be and the same is hereby fixed in the sum of $25.00.

Dated: New York, New York
February 16, 1967
8:15 P.M.

Constance Baker Motley
CONSTANCE BAKER MOTLEY
U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
---x

VICTOR MADERA, RAMIRO MADERA,
MANUELA MADERA,

Plaintiffs,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, BERNARD E. DONOVAN AS SUPERINTENDANT OF SCHOOLS OF THE CITY OF NEW YORK, THERESA RASKOW AS DISTRICT SUPERINTENDANT OF PUBLIC SCHOOLS FOR DISTRICT ONE IN THE CITY OF NEW YORK,

Defendants.

---x

Civil No.

AFFIDAVIT OF
TRANSLATOR

LYDIA PEREZ-PABON, being duly sworn, deposes and says:

1. That I am a Legal Secretary for the Legal Services Unit of Mobilization for Youth, Inc.

2. That I am fully conversant with the Spanish Language which I read, speak and write fluently. That the plaintiff herein, Manuela Madera, does not speak any other language than Spanish.

3. That I have translated the affidavit of the Plaintiff, Manuela Madera, attached hereto, from English to the Spanish language, and have read same to her in Spanish, which was then sworn to by her.

4. That the Plaintiff, Manuela Madera, has related to me that she fully understands and agrees with all the facts recited in said affidavit.

Lydia Perez-Pabon
LYDIA PEREZ-PABON

Sworn to before me this 14th
day of February, 1967

ROBERT SUGERMAN
Notary Public, State of New York
No. 31-3891925
Qualified in New York County
Term Expires March 30, 1967

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

--x

VICTOR MADERA, RAMIRO MADERA,
MANUELA MADERA,

Plaintiffs,

-against-

BOARD OF EDUCATION OF THE CITY OF
NEW YORK, BERNARD E. DONOVAN AS
SUPERINTENDANT OF SCHOOLS OF THE
CITY OF NEW YORK, THERESA RAKOW
AS DISTRICT SUPERINTENDANT OF
PUBLIC SCHOOLS FOR DISTRICT ONE
IN THE CITY OF NEW YORK,

Defendants.

--x

Civil No.

____

AFFIDAVIT

MANUELA MADERA, being duly sworn, deposes and says:

1. That I am a Plaintiff in the above entitled action and I make this affidavit in support of my motion for an order of this Court to enjoin Defendant's preventing me from bringing my attorney, Robert Sugerman, to attend a hearing scheduled for February 17, 1967 at the office of the District Superintendant, at 165 Norfolk Street, New York City, in regard to the suspension of my child, the Plaintiff Victor Madera, and for an order restraining Defendants from conducting this or any other hearing affecting Plaintiffs, until this Court can determine the issues.

2. That Defendants, pursuant to Board of Education General Circular Number 11, have, on information and belief, told my attorney that he will not be allowed to attend said hearing.

3. That I believe this refusal by Defendants deprives all Plaintiffs herein of our constitutional rights.

(a) As a result of said hearing, my child could be suspended from school indefinitely, placed in a "600" school for school delinquents, or, by a future referral to the Family Court of the State of New York authorized by General Circular Number 11,be incarcerated in a state training institution.

(b) The Sixth and Fourteenth Ammendments to the United States Constitution guarantee that no person shall be deprived of life, liberty or property without due process of law, and such due process requires a fair hearing at which there is effective assistance of counsel. In view of the possible consequences of this hearing, Defendant's actions in denying me and my child the assistance of counsel violates these constitutional guarantees.

(c) As a further result of the said hearing, testimony and evidence taken, may, if Defendants decide to refer my son's case to the Family Court, be used against him at that proceeding. That judicial proceeding could result in my son's incarceration in a state training institution. To deny my son the assistance of counsel under such circumstances is, I believe, a further violation of his Sixth and Fourteenth Ammendment rights to counsel and due process, and a further violation of the privilege against self-incrimination guaranteed him by the Fifth and Fourteenth Ammendments to the Constitution of the United States.

(d) That as a further result of said hearing, my husband and I may be forced to choose between signing a "consent" and thus enabling the authorities to make whatever school or other placement they deem desirable for my son, or face neglect charges in Family Court for failure to sign the "consent." That this hearing, besides affecting my son's interests, directly affects mine also, and therefore I too am entitled to have counsel present to assist me.

(e) That I believe I should be presented with a copy of the evidence against my son, that I believe I should be given time to study this evidence and be given an adequate opportunity to present evidence of my own. That I believe I cannot properly prepare or present my case without the assistance of my attorney.

(f) That because I am unfamiliar with the procedures of the Defendant Board Of Education, and because of my poor knowledge of the English language, I need my attorney to assist me at this hearing.

4. That unless this Court issue its temporary restraining order substantially in the form prayed for, my son will be, as a result of a suspense hearing scheduled before this Court can hear the issues presented in this complaint, unconstitutionally deprived of his right to attend public school. Such a deprivation will cause my son and all the Plaintiffs herein substantial and irreparable injury.

5. That no previous application for the relief herein sought has ever been made.

WHEREFORE, your deponent respectfully prays that the temporary restraining order in the form submitted herein be signed and that the Plaintiffs be granted such other and further or different relief as to the Court may seem just.

Manuela Madera
MANUELA MADERA

Sworn to before me this 14th
day of february, 1967.

ROBERT SUGERMAN
Notary Public, State of New York
No. 31-3891925
Qualified in New York County
Term Expires March 30, 1967

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

------------------------------------x

VICTOR MADERA, RAMIRO MADERA,
MANUELA MADERA,

Plaintiffs,

-against-

BOARD OF EDUCATION OF THE CITY OF
NEW YORK, BERNARD E. DONOVAN AS
SUPERINTENDENT OF SCHOOLS OF THE
CITY OF NEW YORK, THERESA RAKOW
AS DISTRICT SUPERINTENDENT OF
PUBLIC SCHOOLS FOR DISTRICT ONE
IN THE CITY OF NEW YORK,

Defendants.

------------------------------------x

Civil No. ______________

AFFIDAVIT

ROBERT S. SUGERMAN, being duly sworn, deposes and says:

1. I am an attorney associated with Harold Rothwax, Esq., attorney for the plaintiffs herein and make this affidavit in support of the plaintiffs' request for an interlocutory injunction herein before a three-judge district court and for the issuance of a temporary restraining order pending the hearing upon the issuance of the interlocutory judgment.

2. Plaintiffs seek a permanent injunction against the enforcement of any and all regulations promulgated by any of the defendants herein which prohibit the plaintiffs from being represented by counsel at any and all school suspension hearings affecting their interests. The grounds for such request are that the defendants' regulations violate the plaintiffs' rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Plaintiffs further seek declaratory relief that they, and all other persons similarly situated, are constitutionally entitled to be represented by counsel of their choice at any such hearings.

3. Pursuant to Board of Education General Circular Number 11, allegedly promulgated under the authority of the New York State Education Law, the defendants have prohibited the plaintiffs herein from bringing their attorney to represent them at a school suspension hearing affecting their interests scheduled for February 17, 1967.

4. As a consequence of this hearing, the infant plaintiff may indefinitely be suspended from attendance at public school, or may even be incarcerated in a "600" school for delinquents. Moreover, as a result of this hearing, the defendants may refer the infant plaintiff's case to the Family Court which may then incarcerate the infant plaintiff in a state training institution. Indeed, testimony and evidence used against the infant plaintiff at this suspension hearing may be introduced into evidence against him at the subsequent judicial proceeding. On this ground alone, the defendants' action in prohibiting the infant plaintiff from being represented by counsel is unconstitutional as violative of the infant plaintiff's Fifth Amendment privilege against self-incrimination.

5. The consequences of this suspension hearing to the infant plaintiff, who may be deprived of his right to an education and even of his liberty, and to his parents, who may be deprived of their right to the love and companionship of their son, of their right to have their son receive an education upon which his future success and earning power, and consequent ability to support them may be based, and who may even face neglect charges as a direct result of the outcome of this hearing, mandate that

the suspension hearing be conducted in accordance with the fundamental requirements of due process. Due process, of course, includes the right to representation by counsel. In a similar case decided only last term, the Supreme Court has set forth its views. In Kent v. United States, 383 U.S. 541 (1966), the Court was considering civil proceedings before a juvenile court, which, in terms of consequences to the infant there involved, were highly similar to those which the infant plaintiff herein faces. Although the precise holding was that assistance of counsel was mandatory in juvenile offender proceedings determining whether to waive jurisdiction over the minor and thus expose him to criminal liability, the Court asserted the scope of a juvenile's constitutional rights in the following language:

> "We do not consider whether, on the merits, Kent should have been transferred; but there is no place in our system of law for reaching a result of such tremendous consequences without ceremony--without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children...permitted this procedure. We hold that it does not." Id. at 554.

> "The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice...." Id. at 561.

> "We do not mean by this to indicate that the hearing... must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment." Id. at 562

The Kent case is particulary significant because the Supreme Court did not predicate the application of due process standards upon a finding or characterization of the proceedings as "criminal" rather than "civil" or as "quasi-judicial" rather than "administrative."

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The Kent case is particulary significant because the Supreme Court did not predicate the application of due process standards upon a finding or characterization of the proceedings as "criminal" rather than "civil" or as "quasi-judicial" rather than "administrative."

> "Instead, in determining the applicability of the particular safeguard, the Court indicated its willingness to rely on a functional analysis--an analysis that ideally would ignore tradition as such and focus on the consequences of the proceeding for the defendant...." The Supreme Court, 1965 Term, 80 Harv. L. Rev. 123, 125 (1966).

6. The right of a pupil subject to such severe disciplinary action as is the infant plaintiff herein to due process consisting of a fair hearing and the right to be represented by counsel is further manifested by cases dealing with suspension of college students. Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930 (1961). Indeed, the Dixon case has been cited with approval in an unreported decision by this Court. Swan v. Bd. of Higher Education, Civil No. 62-2554, S.D.N.Y., July 20, 1962, aff'd, 319 F.2d 56 (2d Cir. 1963). In Swan, the plaintiff's prayer for a declaratory judgment that his suspension from a public college violated his rights under the Fourteenth Amendment was dismissed because barred by the statute of limitations. The district judge, however, clearly affirmed the plaintiff's right to due process:

> "[A]t least insofar as the complaint alleges that plaintiff was suspended from a state-supported school without notice and some sort of a fair-hearing, it states a claim under the federal constitution...." Id. at 6.

The above cases involved college students. Here, the infant plaintiff, still in junior high school, has an even greater interest to protect, for, as opposed to college students, the law gives him the statutory right to attend a public school. Thus, the standards of due process to be applied here are, if anything, higher than in Dixon. At a minimum, the plaintiffs are entitled to choose someone, including their attorney, to assist them at the school suspension hearing.

7. For the foregoing reasons, it is respectfully requested that this application for the convening of a three-judge district court and the issuance of a temporary restraining order be granted in all respects.

ROBERT S. SUGERMAN

Sworn to before me
this 14th day of
February, 1967.

JOSEPH ZURCHAK
Notary Public, State of New York
No. 31-300040
Qualified in New York County
Commission Expires March 30, 1967

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-------------------------------------x

VICTOR MADERA, RAMIRO MADERA,
MANUELA MADERA,

Plaintiffs,

-against-

Civil No.

BOARD OF EDUCATION OF THE CITY OF
NEW YORK, BERNARD E. DONOVAN AS
SUPERINTENDANT OF SCHOOLS OF THE
CITY OF NEW YORK, THERESA RAKOW
AS DISTRICT SUPERINTENDANT OF
PUBLIC SCHOOLS FOR DISTRICT ONE
IN THE CITY OF NEW YORK,

Defendants.

-------------------------------------x

AFFIDAVIT

SUE ANN SHAY, being duly sworn, deposes and says:

1. I am an attorney associated with Harold J. Rothwax, Esq., attorney for the Plaintiffs herein and make this affidavit in support of the Plaintiffs' request for an interlocutory injunction herein before a three-judge district court and for the issuance of a temporary restraining order pending the hearing upon the issuance of the interlocutory judgement.

2. Upon information and belief the Plaintiff Victor Madera was suspended by the principal of Junior High School 22 on February 2, 1967, in accordance with the rules prescribed by General Cicular 11 (Exhibit A), and Plaintiff Victor Madera and Plaintiff Manuela Madera were advised to report to the Family Court, State of New York, County of New York, Juvenile Term, on February 3rd, 1967.

3. Upon information and belief after reporting as directed they were told to return to Family Court on February 8, 1967, and they did so.

4. That on February 8, 1967, a charge of alleged

juvenile delinquency was filed against Plaintiff Victor Madera by Louis Levy, an employee of Defendant Board of Education, and the hearing to determine whether or not Plaintiff Victor Madera is a juvenile delinquent has been adjourned to February 28, 1967.

5. The New York Family Court Act, Section 728 gives Plaintiff Victor Madera the right to retain counsel in a juvenile delinquency proceeding, and I was retained as such counsel on February 8, 1967.

6. On information and belief Defendant Theresa Rakow notified Plaintiffs herein of an " Assistant Superintendant's Hearing " by mail subsequent to their engagement of counsel.

7. For the foregoing reasons it is respectfully urged that Plaintiffs' application for the convening of a three judge district court and the issuance of a temporary restraining orderbe granted in all respects , since Plaintiff Victor Madera would otherwise be deprived of his constitutional right to due process under the law.

Sue Ann Shay
SUE ANN SHAY

Sworn to before me this
14th day of
February, 1967.

ROBERT SUGERMAN
Notary Public, State of New York
No. 31-3891925
Qualified in New York County
Term Expires March 30, 195

Writ
378 US 1
84 S.Ct. 1489

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 31346

VICTOR MADERA, RAMIRO MADERO, MANUEL
MADERA, And All Other Persons Simila
Situated,

Plaintiffs-Appellees,

-against-

BOARD OF EDUCATION OF THE CITY OF NE
YORK, BERNARD E. DONOVAN, as Superint
ent of Schools of The City of New Yo
THERESA RAKOW as District Superinten
of Public Schools For District One i
The City of New York,

Defendants-Appellants

On Appeal From the District Court,
Southern District of New YOrk,

BRIEF OF DEFENDANTS-APPELLANTS

J. LEE RANKIN
Corporation Counsel
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

39-6M-1021(66)

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- -X

VICTOR MADERA, RAMIRO MADERA and
MANUELA MADERA,

Plaintiffs-Respondents

v

No.31346

BOARD OF EDUCATION OF THE CITY OF NEW
YORK, BERNARD E. DONOVAN AS SUPERINTENDENT OF SCHOOLS OF THE CITY OF NEW
YORK, THERESA RAKOW AS DISTRICT SUPERINTENDENT OF PUBLIC SCHOOLS FOR DISTRICT
ONE IN THE CITY OF NEW YORK,

Defendants-Appellants.

- -X

APPELLANTS' BRIEF

Statement

Defendants-appellants appeal from an order entered on April 11, 1967 by United States District Judge Constance Baker Motley in the Southern District of New York enjoining appellants from conducting guidance conferences to consider the reassignment of a suspended child without affording the child and his parents the right to be represented by legal counsel (3a)*.

The injunction was first imposed by an order to show cause with a temporary stay signed by District Judge Motley (48a-50a). This was followed by a hearing on the question of preliminary injunction before the same Judge, which was granted and finally, the entire proceeding was consolidated for trial. Following trial also by Judge Motley, sitting without a jury, the Court issued a decision in favor of plaintiffs and directed defendants to desist from barring attorneys from representing students and parents at guidance conferences (3a-48a).

---

* All numbers in parentheses refer to pages of appellants' appendix unless otherwise identified.

Subsequent to the issuance of the order below, on May 1, 1967, appellants obtained a stay from this Court of the District Court's order pending the argument of the appeal. Consequently, appellants hereby renew their application for a stay pending the decision in this case.

The Facts

Plaintiff, Victor Madera is a student in the seventh grade in Junior High School No. 22 located in Manhattan. Victor had behavioral difficulties in school over a period of more than a year. These matters are more fully set forth in Defendants' Exhibit "A" referred to as the "Anectodal Record" of Victor Madera (94a-98a, in camera).

Ultimately, Victor's principal decided that suspension was warranted. The principal of a school is authorized to suspend a pupil for a period of not more than five days during which time he reports the child's status to the District Superintendent, his superior. If the child is not restored to regular classes within the five day period it is the obligation of the District Superintendent to schedule a Guidance Conference for the purpose of considering the status of the child and making a determination as to the appropriate educational assignment deemed best in the light of the personal needs and abilities of the student (70a-81a).

In this case, pursuant to the regular practice, the parents were notified to attend a conference in the District Superintendent's office. They sought legal counsel and appellees' present counsel, the legal division of Mobilization For Youth, asked to appear on behalf of Mr. and Mrs. Madera and their son. This request was denied in accordance with the provisions of Circular No. 16, dated April 18, 1966, which sets forth the procedure to be followed by District School Superintendents in conducting guidance conferences for suspended students (70a-81a). Plaintiffs then enjoined the hearing before the District Superintendent until the question of their right to counsel could be determined.

Counsel are precluded from attending guidance conferences for policy reasons set forth in Circular No. 16 as follows:

> "Inasmuch as this is a guidance conference for the purpose of providing an opportunity for parents, teachers, counselors, supervisors, etal. to plan educationally for the benefit of the child, attorneys seeking to represent the parent or the child may not participate (78a)."

1 The participation of the parents, however, is most desirable. The Circular states "Every effort should be made to secure the parent's attendance (79a)."

2 As a result of the conference the district superintendent may reinstate the student in his same school, transfer him to another school, refer him for placement in a school for socially maladjusted children, refer him to the Bureau of Child Guidance or other suitable agency for study and recommendations, including medical suspension, home instruction, exemption or a referral to the Bureau of Attendance for court action (79a).

The Bureau of Child Guidance is the clinical arm of the school board and is brought into use when professional psychological or psychiatric assistance in diagnosis appears helpful (230a-251a).

The Bureau of Attendance acts in cases of truancy to see that children and parents comply with the compulsory attendance provisions of the Education Law (251a-257a, 281a-285a).

It should be noted that district superintendents do not have power to exempt a child from attending school; this is reserved to the superintendent of schools and is rarely used (79a, 81a, 224a).

The purpose of the guidance conference was set forth in the affidavit of Bernard E. Donovan, Superintendent of Schools, as follows:

> "The sole purpose of the conference is to study the facts and circumstances surrounding the temporary suspension of this student by his school principal, and to place the child in a more productive educational situation. At these conferences the assistant superintendent interviews the child, his parents and school personnel to learn the cause of the child's behavior. The conference is conducted in an atmosphere of understanding and cooperation, in a joint effort involving the parent, the school, guidance personnel and community and religious agencies. There is never any element of the punitive, but rather an emphasis on finding a solution to the problem.
>
> After full and careful study and discussion a plan is formulated to deal more adequately with the problems presented by the child. Every effort is bent towards the maintenance of a guidance approach. The emphasis is on returning the child as rapidly as possible to an educational setting calculated to be most useful to him (89a-90a; see also, generally, testimony of defendant Theresa Rakow 165a-230a, 264a-279a)."

No one within the entire structure of the Board of Education has the power to deprive a child of his freedom by confinement or commitment to an institution (90a, 242a, 245a, 247a, 249a-250a, 300a, 322a). Such matters are left to the Courts where the right of counsel is not disputed.

During and after trial there were three actions taken by the District Court which defendants also wish to review on this appeal.

1. The Court refused to permit counsel for defendant to inspect Court's Exhibit 21, a student's suspense file, for purposes of cross examining a witness who had described the exhibit

at length in response to questions by the Court (274a-275a).

2. After the trial was over, the Court, on its own motion, added 23 new exhibits (also suspense files) to the record without affording defendants an opportunity to object or examine a witness concerning them (47a).

3. On the last day of trial, at the end of plaintiffs' case, the Court granted plaintiffs' motion to convert the suit into a class action. The class was never adequately defined nor was there any notice given to any member of the class however defined (317a, 319a).

The Decision of the District Court

The essence of the holding below was set forth by the Court as follows (20a-21a):

> "As a result of a review of the testimony, exhibits and records produced by the District Superintendent, the court finds that a 'Guidance Conference' can ultimately result in loss of personal liberty to a child or in a suspension which is the functional equivalent of his expulsion from the public schools or in a withdrawal of his right to attend the public schools.
>
> The court also finds that as a result of a 'Guidance Conference', adult plaintiffs may be in jeopardy of being proceeded against in a child neglect proceeding in the Family Court.
>
> For the foregoing reasons, this court concludes that the due process clause of the Fourteenth Amendment to the Federal Constitution is applicable to a District Superintendent's Guidance Conference. More specifically, this court concludes that enforcement by defendants of the 'no attorneys provision' of Circular No. 16 deprives plaintiffs of their right to a hearing in a state initiated proceeding which puts in jeopardy the minor plaintiffs' liberty and right to attend the public schools."

The child who is a serious behavior problem is still nonetheless a child - and moreover one in need of professional help. A way must be found to assist in his educational growth and emotional adjustment without impeding the progress of others. A major effort to do this is through the work of a district superintendent's guidance conference. The child's problems are discussed informally and candidly with his parents and those professionally trained to help. A decision - an educational decision - is then reached which is intended to help the child make a better adjustment to school life. This suit was brought on the premise that a lawyer is essential to protect the interest of the child at the conference.

Defendants' position is that participation of an attorney would necessarily convert the conference into an adversary proceeding with the result that the valid interests of both the school and the child will be impaired. Thus the issue is posed: Must a school system adopt formal quasi-judicial procedures to consider an educational plan for children who become behavior problems in the course of their work in school?

> pertinent information, and then the parent and child come in and participate in the conference. No decision is made until the parent and child have participated" (227a-228a).

The Court, contrary to the credible evidence, erroneously found that the parents and child wait outside until a decision is made (14a). The record, however, indisputably shows that the parent and student "participate fully in the discussion" (204a-205a; 199a-200a; 189a-191a; 170a).

Nor are the decisions, as conceived by the Court below, *ex parte* determinations (26a).[1] Determinations without parental participation are reached only:

> "... when the parent has failed to appear, if the parent notified us that she would not come for some reason or other, a change was made. In a few cases a parent has not appeared and we have held the conference and then we send a letter giving the parent our recommendations and usually saying, 'If you would like to discuss this further, you may come into our office and discuss it,' and in some cases the parent has come in and talked to the guidance counselor in the office about it before taking the child to another school" (228a)

These determinations are no more *ex parte* than are decisions reached by a court or administrative tribunal after a party has defaulted in appearing.

---

[1] Arlene Hannah testified that from November 1962 to the end of 1963 the decision at the conference was made prior to the participation of the parent and child in the conference (143a). See also testimony of Robert E. Daniels (150a). Nowhere was it suggested that after 1963 the conference did not occur as described by Miss Rakow.

Not only are the parents welcome to appear but they may bring with them social workers familiar with the situation and a translator if necessary. The Board also will supply a translator if advised that the parents do not speak English. The conference in short is an attempt by qualified educators and guidance counsellors working together with a child, his parents and interested outside social workers to find the best educational answer for a student with an educational problem.

The court below reasoned that education is a state-provided right which may not be suspended for a substantial length of time without regard to the procedural requirements of due process of law as embodied in the Fourteenth Amendment. Accordingly, the Court held there must be a hearing at which a suspended student and his parents must be permitted to be represented by counsel.

The court, however, erred in failing to distinguish between judicial due process required at formal proceedings and the non-judicial due process required in an informal proceeding such as a guidance conference.

investigative (questions)
fact finding (adjudicatory)
(the distinction is)

This is not the distinction.

mis-statement again of investigative (statutory) vs fact-finding (administrative)

B. The requirements of due process

The essentials of due process required in a criminal or civil judicial proceeding are well established and include at least the following: (1) proper notice, (2) an impartial hearing, (3) the right to confront and cross-examine adverse witnesses, (4) the right to summon witnesses and offer evidence, (5) the privilege against self incrimination, and (6) the right to be represented by counsel. This is especially so where the proceedings may terminate in incarceration. Application of Gault, 35 Law Week 4399 (May 16, 1967), Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16L. ed. 2d (1966). The question is whether such requirements must be included in an informal guidance conference between school authorities and a student where the purpose of the conference is to determine how best to meet the educational needs of the pupil and his fellow students.

analogy

It is axiomatic that "the requirements of due process frequently vary with the proceeding involved ..." Hannah v. Larche, 363 U.S. 420, 440, 80 S. Ct. 1502, 4 L. ed. 2d 1307 (1960), and "what is due process of law must be determined by circumstances." (Reaves v. Ainsworth, 219 U.S. 296, 304, 31 S.Ct. 230, 55 L. ed. 225 [1911]).

fact finding vs adjudicat.

There is a clear distinction between a judicial hearing and an informal proceeding. Rase v. United States, 129 F. 2d 204 (6th Cir. 1942); Seele v. United States, 133 F. 2d 1015 (8th Cir. 1943). legislative authority "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end." (Prentiss v. Atlantic Coast Line, 211 U.S. 210, 226, 29 S.Ct. 67, 53 L. ed. 150 [1908]). Where, however, the occasion calls for a proceeding less formal than a judicial inquiry it should "be so fitted in its range to the needs of the occasion." (Escoe v. Zerbst, 295 U.S. 490, 493, 55 S. Ct. 818, 79 L. ed. 1566 [1935]).

this distinction has been changed in emphasis

As the Supreme Court declared in Cafeteria and Restaurant Workers Union v. McElroy, 367 U.S. 886, 894-895, 81 S. Ct. 1743, 6 L. ed. 1230 (1961):

> "The Fifth Amendment does not require a trial-type hearing in every conceivable case of government impairment of private interest. * * * The very nature of due process negates any concept of inflexible procedures applicable to every imaginable situation. [citations omitted] '"[D]ue process", unlike some legal rules is not a technical conception with fixed content unrelated to time, place and circumstances.' It is 'compounded of history, reason, the past course of decisions * * *.' Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 162-163, 71 S. Ct. 624, 643, 95 L. ed. 817 (concurring opinion)."

one citizen already previously declared by a competent auth. a right – the [illegible] main hearing has been held

the ct below had held a hearing

all cited by
Res. v. Wood

See also Norwegian Petroleum Products Co. v. United States, 288 U.S. 294, 319, 53 S. Ct. 350, 77 L. ed. 796 (1932), Atkinson, T. & S.F. R. Co. v. United States, 284 U.S. 248, 52 S. Ct. 146, 76 L. ed. 273 (1932), United States ex rel. St. Louis, W. R.Co. v. Interstate Commerce Commission, 264 U.S. 64, 44 S. Ct. 294, 68 L. ed. 565 (1924).

It is clear here, the student suspended from public school was afforded notice and would have had a hearing concerning his suspension but for the temporary injunction with only partial participation. The procedure would have met the standard required by Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5thCir. 1961) cert. den. 368 U.S. 930, 82 S. Ct. 368, 7 L. ed. 2d 193. It is equally clear that "the Fourteenth Amendment does not guarantee judicial due process ..." at such a hearing. Steier v. New York State Education Commissioner, 271 F. 2d 13, 21 (2nd Cir. 1959) (Judge Moore, concurring opinion), cert. den. 361 U.S. 966 That is so because the hearing by its nature is non judicial and non-adversary. Dixon v. Alabama State Board of Education, supra; People ex rel. Bluett v. Board of Trustees, 10 Ill. App. 2d 207, 134 NE 2d 635, 58 ALR 2d 899 (1956); Tranton v. McKenney, 226 Mich. 245, 197 NW 510, 33 ALR 1175 (1924); State ex rel. Ingersoll v. Clapp, 81 Mont. 200, 263 Pac. 433 (1928), cert. den. 277 U.S. 591, 48 S. Ct. 528, 72 L. ed. 1003, error dismissed 278 U.S. 661, 49 S. Ct. 7, 73 L. ed. 568,

not true - no confrontation

not true

not true - recognized by

all cited in Dixon

Goldstein v. New York University, 76 App.Div. 80, 78 N.Y. Supp. 739 (1902); Koblitz v. Western Reserve University, 21 Ohio CC 144, 11 Ohio CD 515 (1901); State ex rel. Sherman v. Hyman, 180 Tenn. 99, 171 SW 2d 833 (1942), cert. den. 319 U.S. 748, 63 S. Ct. 1158, 87 L. ed. 1703. Contra. Commonwealth ex rel. Hill v. McCauley, 3 Pa. Co. 77.

C. There is no due process requirement for counsel at an informal proceeding such as a suspension guidance conference.

Formality ≠ the guideline - Rather it is whether it is invest or adjudicatory - Spevel v. Klee

Informal proceedings on matters of importance under many conditions comply with the requirements of "due process" without representation by counsel. United States v. Miller, 143 F. Supp. 712, 718 (N.D. W.Va. 1956), affd. 239 F. 2d 148 (4th Cir. 1956); Cf. Harris v. Ross, 146 F. 2d 355, 358 (5th Cir. 1944); Lehr v. United States, 139 F. 2d 919, 922 (5th Cir. 1944); United States v. Pitt, 144 F. 2d 169 (3rd Cir. 1944); Bowles v. Baer, 142 F. 2d 787 (7th Cir. 1944).

In Koblitz v. Western Reserve University, 21 Ohio CC 144, 11 Ohio CD 515 (1901) a student who had been expelled following an informal proceeding alleged that his right to due process had been denied him because, inter alia, he had not been permitted a hearing with the right to be represented by counsel. The court, like the overwhelming majority of courts, the 19th-centu passing on the due process requirements to be met prior to a suspension, held that all that was required was a fair informal proceeding. Thus, the failure of the university to provide a hearing where he could be represented by counsel was not a denial of due process. To the same effect see Cosme v. Board of Education, 50 Misc. 2d 344, 270 NYS 2d 231, (Sup. Ct., N.Y.Co. 1966), affirmed without opinion _____ App. Div. 2d _____, March 29, 1967.

In Dixon v. Alabama State Board of Education, supra, the Fifth Circuit Court of Appeals was meticulous in stating the requirements of an informal proceeding prior to expulsion or suspension. Thus, it declared, at p. 159:

this is not the full quote
See Xerox

> "In such circumstances [expulsion for misconduct] a hearing which gives the Board or the administrative authorities of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. This is not to imply a full-dress judicial hearing, with the right to cross-examine is required. Such a hearing, with the attending publicity and disturbance of college activities, might be detrimental to the college's educational atmosphere and impractical to carry out. Nevertheless, the rudiments of an adversary proceeding may be preserved without encroaching

no child could do this without counsel

> upon the interests of the college. In the instant case, the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the students' inspection. If these rudimentary rules of fair play are followed in a case of misconduct of this particular type, we feel that the requirements of due process of law have been fulfilled."

Nowhere in that opinion, or in any other opinion of any other court, is there a requirement that in an informal non-judicial proceeding, as here, representation by counsel is a requirement of due process. But it recognizes adjudication vs fact-finding [illegible] Indeed, in Dixon, the Court, having declared all the essentials of the required hearing, stated that having met them, "the requirements of due process of law will have been fulfilled." Ibid. Of necessity, if representation by counsel is an essential ingredient of due process, as contended by appellees and held by the Court below, the Court of Appeals in the Dixon case would not have ruled that in the absence of such an essential element the requirements of due process are fulfilled. ~~But~~ But they never ruled counsel (retained) to be [illegible] not [illegible] See Steier v. New York State Education Commissioner, 271 F. 2d 13, 21 (2nd Cir. 1959), cert. den. 361 U.S. 966 (1959).

no child could do this without counsel

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nor for the ABC IRS SEC FDA CFC etc

and none is needed

present for the Board of Education. There is no prosecutor; no judge, no jury and there are no complex rules of procedure. and none are needed Cf. Powell v. Alabama, supra. There is no requirement that witnesses be heard under oath. and none is needed Formal rules of evidence are not applied. and none should be None of these, however, are essential to a concept of fundamental fairness under the circumstances. Dixon v. Alabama State Board of Education, but everything else is given supra; Knight v. State Board of Education, supra; State ex rel. Ingersoll v. Clapp, supra; Koblitz v. Western Reserve University, supra; State ex rel. Sherman v. Hyman, supra.

all cited in Dixon and not read by CC

If professional advice is to transfer the student to a parental school or an institution either for reason of physical or mental health or other reasons the transfer may only be accomplished with the consent of the parents or by court order.[2] No school official has this authority (Education Law §3214). At this stage the parent may refuse such consent in which event the child may not be transferred without a judicial proceeding in the Family Court (Family Court Act §758). The right to representation by counsel is guaranteed at this proceeding (Family Court Act §741), and the Court may consider no evidence that is not "competent, material and relevant ..." (Family Court Act §744).

Coercion of this order - cite case Kent

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[2] Of course, prior to determining whether to consent or not the parent may seek the advice of counsel.

* only because of recent S. Ct. decisions

In addition, as pointed out in the decision below (28a) it is most doubtful that any damaging statements made by the student or his parents at the guidance conference could be introduced into evidence in any subsequent court proceedings. Garrity v. New Jersey, 383 U.S. 941, 87 S. Ct. 616 16 L.ed. 2d 205 (1967); Spevack v. Klein, ______ U.S. ______, 87 S. Ct. 625 (1967); Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. ed. 2d 694 (1966); Escobedo v. Illinois, 378 U.S. 478, 84 S. Ct. 1758, 12 L. ed. 2d 977 (1964).

If the parents are aggrieved by the decision made at the conference, they may immediately petition or appeal to the Commissioner of Education who may set aside the action taken pending the hearing of the petition or appeal. New York Education Law Sections 310 (7) and 311 (2).

contra to position taken earlier

Thus, it appears that there is neither an actual need, or due process requirement, for the skills or representation by counsel at the guidance conference. On the other hand, the presence of counsel would change the basic nature of the conference from one based on education and emotional needs to an adversary proceeding. not so - See Gault He would proceed as he is trained to do as an advocate seeking to make the most favorable record on behalf of his client for administrative or judicial review.

precisely

see. to go to educ comm. regs. formal proce

He would generally be expected to conduct himself as he would in court or before a formal administrative tribunal such as the Federal Trade Commission or National Labor Relations Board. While this approach is essential to ~~a Judicial~~ an adjudicatory hearing proceeding, it is clear that at the guidance conference it would "so far encumber an investigatory proceeding as to make it unworkable or unwieldy." In re Groban, 352 U.S. 330, 334, 77 S. Ct. 510, 1 L. ed. 2d 376 (1957). The lawyer would bring no special skills or knowledge to the conference other than those unique to his profession. asking ~~Questions~~ Lawyers usually are not trained as educators, guidance counselors or psychologists. If the guidance conference should be an adversary proceeding then a lawyer should attend, perhaps for both "sides" and hearing officers must be appointed to preside and make the necessary rulings. Defendants believe this approach is both unnecessary and unwise when viewed from the point of view of the student, his parents or the school system. Educational and guidance values would be subordinate to legal forms of procedure best left to the courts. NOT SO

When adjudicatory hearing as held

Mallory - dissent in Escobedo

not so w F.A. Act etc

In view of the informal nature of the proceeding and the ends sought to be accomplished, there is not only no need for the specialized skills of the attorney, but, in fact, the exercise of those skills may well work to the detriment of the student. To allow counsel at this stage would, at the least, convert an informal proceeding into at least a quasi-judicial proceeding.

Wrong distinction again

> "Informal procedure is not the equivalent of no procedure .... The fundamentals of procedural fairness can be observed even in an informal conference - or even in a telephone conversation or exchange of letters or telegrams."
> 1 Davis, Administrative Law Treatise, §4.14 (p. 98, 1965 Supp.)

D. Review proceedings available to set aside the results of a guidance conference.

The Court below was concerned that a full hearing with representation by counsel be permitted. The Court, however, failed to give adequate weight to the review procedures provided by statute.

diff Article

Sections 310 and 311 of the New York Education Law provide for a review on appeal to the Commissioner of Education in the case of any child or parent aggrieved by the actions of any school authority, and particularly where a child is suspended.

Section 310 provides in relevant part that:

> "Any person conceiving himself aggrieved may appeal or petition to the commissioner of education who is hereby authorized and required to examine and decide the same; * * *. Such appeal or petition may be made in consequence of any action:
>
> * * *

> 7. By any other official act or decision of any officer, school authorities, or meetings concerning any other matters under this chapter or any other act pertaining to common schools."

Section 311 provides, in relevant part, that:

> "The commissioner, in reference to such appeals, petitions or proceedings, shall have power:
>
> * * *
>
> (a) To determine whether an appeal shall stay proceedings, and prescribe conditions upon which it shall or shall not so operate.
>
> * * *
>
> 4. To make all orders ... which may, in his judgment, be proper or necessary to give effect to his decision."

Pursuant to Section 310 the Commissioner of Education has heard a number of cases involving the suspension of students from school. Matter of Sheffel, 73 N.Y. ~~St.Dept. Rep.~~ 104; Matter of Yonkes, 78 N.Y. St. Dept. Rep. 66; Application of Olson, 40 Misc. 2d 246, 242 N.Y.S. 2d 1002, 1003 (Sup. Ct., Spec. Term Part I, Nassau Co. 1963). At hearings, dealing with the suspension of a student from class which may involve disputed issues of fact, the Commissioner of Education would be required to conduct a judicial hearing "according to procedure which satisfies the rudiments of indeed - quasi judicial [illegible] due process of law ..." O'Brien v. Commissioner of Education, 4 N.Y. 2d 140, 146, 173 N.Y.S. 2d 265, 268, 149 N.E. 2d 705 (1958) (concurring opinion of Judge Van Voorhees). Thus, at that hearing

But no speak of Doe susp. regulations

with no record below on which to proceed

the student and his parents have the right to be represented by counsel. Hecht v. Monaghan, 307 N.Y. 461, 121 N.E. 2d 421 (1954). the 1st hearing Prior to or during the hearing the Commissioner could stay the suspension or other action of the school authorities (Education Law §311 [2]).[3] Following the hearing he may "make all orders ... which may, in his judgment be proper or necessary to give effect to his decision." (Education Law §311 [4]).

The fact that a formal hearing with counsel is afforded by the Commissioner and not at the guidance conference does not violate due process. but does not discuss Constitutional safeguards As stated by Mr. Justice Brandeis for a unanimous court in Phillips v. Commissioner, 283 U.S. 589, 596-597, 51 S. Ct. 608, 611, 75 L. ed. 1289 (1931):

> "[M]ere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate."

not so [illegible]

See also Palmer v. McMahon, 133 U.S. 660, 10 S. Ct. 324, 33 L. ed. 772 (1890); McGregor v. Hogan, 263 U.S. 234, 44 S. Ct. 50, 68 L. ed. 282 (1923); Jordan v. United Insurance Company of America, 110 U.S. App. D.C. 112, 289 F. ed 778 (D.C. Cir. 1961; Consolidated Truck Service, Inc. v. United States, 193 F. Supp. 773 (D.C. N.J. 1960); Bradford v. School District No. 20, 244 F. Supp. 768 (E.D.S.C. 1965), affd. 364 F. 2d 185 (4th Cir. 1966).

The informal non-judicial, non-adversary guidance conference and the formal petition or appeal to the Commissioner of Education are integral components of a system intended to provide for the educational needs of each student. In this context, the comments of Mr. Justice Holmes dissenting in Truax v. Corrigan, 257 U.S. 312, 344, 42 S. Ct. 124, 66 L. ed. 254 (1921) are relevant:

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[3] While rightfully concerned that some students remained suspended for lengthy periods of time the Court below failed to recognize that by petition or appeal to the Commissioner of Education the student could have obtained a stay of the suspension pending the Commissioner's determination.

> "There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several States, even though the experiments may seem futile or even noxious to one and to those whose judgment I most respect."

In considering the need for counsel in the circumstances herein the court should consider:

> "The precise nature of the interest that has been adversely affected, the manner in which it was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished -- these are some of the considerations that must enter into the judicial judgment." (Mr. Justice Frankfurter in concurring opinion in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 163, 71 S. Ct. 624, 644, 95 L. ed. 817 [1951]).

we can't know w/o our participation

same thing

Where, as here, the guidance conference gives the student notice and a full opportunity to be heard in an informal non-judicial setting and where there is a statutory system for a petition or appeal to the Commissioner of Education with all the safeguards of a judicial proceeding, representation by counsel should not be required at the conference. The presence of an attorney could in fact "so far encumber the .....proceeding as to make it unworkable or unwieldy." (In re Groban, supra) and obstruct the very aim of the guidance conference which is to provide for the continuing education of the student.

Malloy v Hogan

Escobedo contra

By constitutional standards of due process or simpler standards of policy there is neither present a right nor a need for attorneys at the conference. The school system of New York City has many problems - some of them severe - but it does not follow that the solutions will come by extending the right of counsel into areas of educational planning. Nor does it follow that suspense cannot contain retained counsel at hearing School officials can be held to account for any unlawful decisions they may make or unlawful practices they may adopt but the day to day operations of the schools should not be conducted as quasi-judicial proceedings. The work of the schools must continue. but after the fact - Individual rights must be protected. The present system affords a constitutional and practical balance of the interests of both. The decision below should be reversed.

this is not determining w/ Gault

What record available

POINT II

THE COURT BELOW ERRED IN DECLINING TO ABSTAIN FROM THE EXERCISE OF ITS JURISDICTION SINCE PLAINTIFFS FAILED TO EXHAUST AVAILABLE ADMINISTRATIVE REMEDIES PROVIDED BY STATE LAW.

The Court below declined to abstain from the exercise of its jurisdiction despite the fact that respondents have at all times had a clear and adequate administrative remedy under State law. Where such a remedy exists, the Court's refusal to abstain constitutes an abuse of discretion.

In refusing to abstain the Court below held:

> "Where the terms of the state (local school board) provision under attack are clear, there is no basis for abstention to require plaintiffs to exhaust either state administrative or judicial remedies."

However, as Federal Courts have frequently observed, there is

> "... a long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted" Meyers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51, 68 S. Ct. 459, 463, 82 L. ed. 638 (1938).

Thus, "before the courts can be called upon, the preliminary sifting process provided by the statutes must be gone through." United States v. Sing Tuck, 194 U.S. 161, 170, 24 S. Ct. 621, 624, 48 L. ed. 917 (1906). See also Aircraft & Diesel Equipment Corp. v. Hirsch, 331 U.S. 752, 67 S. Ct. 1493, 91 L. ed. 1796 (1947); Federal Power Commissioner v. Arkansas Power & Light Co., 330 U.S. 802, 67 S. Ct. 963, 91 L. ed. 1261 (1947) (per curiam), reversing 81 U.S. App. D.C. 178, 156 F. 2d 821 (D.C. Cir. 1946); Petroleum Exploration, Inc. v. Public Service Commission, 304 U.S. 209, 58 S. Ct. 834, 82 L. ed. 1294 (1938).

New York Education Law §3214 provides:

> "6. Suspension of a minor. a. The school authorities, the superintendent of schools, or district superintendent of schools may suspend the following minors from required attendance upon instruction:
>
> (1) A minor who is insubordinate or disorderly;
>
> (2) A minor whose physical or mental condition endangers the health, safety, or morals of himself or of other minors;
>
> (3) A minor who, as determined in accordance with the provisions of part one of this article, is feebleminded to the extent that he cannot benefit from instruction.

> b. Procedure after suspension. In the case of a minor who is suspended as insubordinate or disorderly, immediate steps shall be taken for his commitment as provided in this section, or for his attendance upon instruction elsewhere; in the case of a minor suspended for other cause, the suspension may be revoked whenever it appears to be for the best interest of the school and the minor to do so."

Section 305 of the Education Law provides that the Commissioner of Education "is the Chief Executive Officer of the state system of education" (§305 [1]). He has "general supervision over all schools and institutions which are subject to the provisions of ... [the Education Law], or of any statute relating to education ...." (§305 [2]).

Section 310 of the Education Law provides that the aggrieved student may appeal to or petition the Commissioner regarding any "official act or decision of any officer, school authorities .... concerning any .... matter under .... [the Education Law], or any other act pertaining to common schools." (§310 [7]).

The Commissioner is empowered to "stay proceedings and prescribe conditions upon which it shall or shall not so operate." (§311 [2]). And he may "make all orders .... which may, in his judgment, be proper or necessary to give effect to his decision." (§311 [4]).

As the record shows, two days prior to the scheduled conference, Miss Sue Ann Shay, an attorney employed by Mobilization For Youth, Inc., telephoned the Assistant Superintendent's office and informed the Assistant Superintendent's secretary that she would attend the scheduled conference as counsel to appellees. (5a). The Secretary informed Miss Shay that attorneys were not permitted to attend the guidance conference pursuant to the provisions of Circular No. 16. (5a). At this point the attorneys for appellees commenced the instant proceeding by order to show cause seeking a temporary injunction barring defendants from holding the conference until the issue of representation by counsel could be determined.

Instead of seeking relief in the Federal Court appellees could and should have petitioned the Commissioner of Education to set aside the practice of barring attorneys from the conference and sought a stay of the proceedings pending the Commissioner's determination of the lawfulness or desirability of that practice (§§310, 311, supra).

In Baron v. O'Sullivan, 258 F. 2d 336, 337 (3rd Cir. 1958), the Court asked and answered the same question posed herein:

> "May a litigant properly seek the remedy of a federal court under the Civil Rights Act before exhausting the available administrative remedies of the State? We think not."

The cases relied on by the Court below in declining to exercise its discretion to abstain are not applicable to the situation at hand where complete relief under state administrative procedures is abailable.

In McNeese v. Board of Education, 373 U.S. 668, 83 S. Ct. 1443, 1 L. ed. 2d 622 (1963), the Court found that an appeal to the Superintendent of Public Instruction would be futile since, under state law, he:

> "apparently has no power to order corrective action. In other words, his 'only function ... is to investigate, recommend and report ... [He] can make no controlling finding of law or fact ... [His] recommendation need not be followed by any court ... or executive officer.' United States Alkali Export Assn. v. United States, 325 U.S. 196, 210. It would be anamolous to conclude that such a remedy forecloses suit in the federal courts when the most it could produce is a state court action that would have no such effect." 373 U.S. at 675.

The Court held that under those circumstances the appellees need not exhaust clearly inadequate administrative remedies.

In the instant case the Commissioner of Education can "regulate the practice" complained of (§311 [1]), and thus, contrary to McNeese, he can give the specific remedy sought by plaintiffs herein.

Thus, in the instant situation there is an adequate and clear administrative remedy, which appellees failed to exhaust.

Where there is a clear and adequate administrative review of the appellees' claim, the Federal Court abuses its discretion where it does not abstain in the exercise of its discretion. Burford v. Sun Oil Co., 319 U.S. 315, 63 S. Ct. 1098, 87 L. ed 1424 (1943).

> "The obvious reason for this is that 'the administrative remedy plainly should be pursued' if 'an administrative proceeding might leave no remnant of the constitutional question.' Public Utilities Comm'n of State of Cal. v. United States, 355 U.S. 534, 539-540, 78 S. Ct. 446, 450, 2 L. Ed. 2d 470 (1958); see Allen v. Grand Central Aircraft Co., 347 U.S. 535, 74 S. Ct. 745, 98 L. Ed. 933 (1954)" Allegheny Airlines, Inc. v. Fowler, 261 F. Supp. 508, 518 (S.D.N.Y. 1966).

If the Commissioner of Education determined that plaintiffs were entitled to the right to counsel at the guidance conference, that determination would "leave no remnant of the constitutional question." Public Utilities Commission of the State of California v. United States, 355 U.S. 534, 540, 78 S. Ct. 446, 450, 2 L. ed 2d 470 (1958).

✓

It was the primary objective of Mr. Justice Frankfurter, who articulated the abstention doctrine, to avoid "the waste of a tentative decision as well as the friction of a premature constitutional adjudication." Railroad Commission of Texas v. Pullman Co., 312 U.S. 496, 500, 61 S. Ct. 643, 645, 85 L. ed. 971 (1941).

Under the doctrine of comity a Federal Court should abstain from jurisdiction where, as here, its exercise would disrupt a state administrative process. Burford v. Sun Oil Co., supra. See also Uniformed Sanitationmen Association, Inc. v. Commissioner of Sanitation of the City of New York, 66 Civ. 4307 (S.D.N.Y., December 27, 1966, Canella, J.) and Sarisohn v. Appellate Division, Second Department, Supreme Court, etc., 67 Civ. 178 (E.D.N.Y., March 16, 1967, Bartels, J.) In the circumstances herein action by the lower court constituted an undue interference with the state administrative proceeding. Fenster v. Leary, 264 F.

Supp. 153 (S.D.N.Y., 1966) affd. ____ U.S. ____ , 87 S. Ct. 862, ____ L. ed. 2d ____ (1967).

As the Suppreme Court noted in Harrison v. NAACP, 360 U.S. 167, 176, 78 S. Ct. 1025, 1030, 3 L. ed. 2d 1152 (1958), the abstention doctrine:

> "... is aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our federal system."

The failure of the District Court to abstain opens the doors of the Federal Courts to a potential flood of complaints by students and their parents. Acceptance of such cases erodes the authority of the Commissioner of Education to pass on the actions of his subordinates and deprives him of his power to prescribe or modify educational practices and policies. There is nothing in the record to indicate that the Commissioner could not, or would not, have ruled on appellees' claims had he been petitioned to do so. The Commissioner could grant them complete relief if he found their claims to be proper.

Persons aggrieved by action of the Commissioner, moreover, may review his decisions in the State courts under the provisions of Article 78 of the Civil Practice Law and Rules. Matter of Vetere v. Allen, 15 N Y 2d 259, 206 N.E. 2d 174 (1965); Ellis v. Allen, 4 A.D. 2d 343, 165 N.Y.S. 2d 624 (3rd Dept. 1957), appeal dismissed, 4 N.Y. 2d 693, 171 N.Y.S. 2d 86, 148 N.E. 2d 302, (1958). Plaintiffs' rights can be protected without substitution of Federal control in an area customarily reserved to the states. Thus, on the basis of abstention alone the decision below should be reversed and the complaint dismissed.

POINT III

THE DISTRICT COURT DEPRIVED DEFENDANTS OF THEIR RIGHT TO CROSS-EXAMINE A WITNESS CONCERNING AN EXHIBIT IN EVIDENCE AND IMPROPERLY ADDED EXHIBITS TO THE RECORD ON AN EX PARTE BASIS.

Upon the order of the Court below defendants produced various documents dealing with suspensions in the period 1965-1967 (183a-185a, 187a). In the light of the nature of the material in these suspension files, in order to protect the students and families involved, the Court ordered them to be sealed (47a, 185a, 264a). Certain of these documents were, however, introduced into evidence by the Court on its own motion (264a-274a, 319a). At the hearing on March 23, 1967, the Court called defendant Rakow, as its own witness. In the course of its examination, the Court handed the suspension file of "John Doe" (Court Ex. 21) to the witness and questioned her regarding its contents. The examination proceeded in detail and may be found at pp. 264a-274a of appellants' appendix. When defendants' counsel (Mr. Flanagan) asked to examine the file for purposes of cross-examination of Miss Rakow, the Court refused permission evidently on the basis that to do so would disclose improperly the name of the student involved.

Permission was denied in the following colloquy:

> "Mr. Flanagan: Your Honor, may I look at the file?
>
> The Court: Yes. Do you want the witness to remain?
>
> Mr. Flanagan: Yes, please.
>
> The Court: The Court has ordered these files sealed and opened only to inspection by the Court. Does that permit you to have the right to look at these? Do you have any authority for that?
>
> The Witness: No.
>
> Mr. Flanagan: Well, your Honor, the witness was questioned on the file and I believe I would have the right to question her if I see any information in there that I would like to bring out to the Court entered on the record.
>
> The Court: I think in view of the Court's order the file itself would not be opened to you.
>
> If you want to ask her some questions about it, all right." (274a-275a).

This remarkable ruling served no purpose whatever other than to deprive defendants of their right of cross-examination. Miss Rakow the witness was a defendant represented by Mr. Flanagan. The records in question came from

Miss Rakow's office and were produced in response to instructions of the Court directed to defendants' counsel. Certainly there was nothing in these records which were confidential as to Miss Rakow or her attorney.

The refusal to allow an attorney to inspect exhibits in evidence and cross-examine witnesses concerning them constitutes reversible error:

> Lennon v. United States,
> 20 F. 2d 490, 493 (8th Cir. 1927);
>
> Morris v. United States, 149 Fed. 123,
> 136 (5th Cir. 1907);
>
> People v. Carter, 48 Cal. 2d 737,
> 312 P. 2d 665, 574 (1957);
>
> Warren v. Stegall Trucking Co.,
> 259 N.C. 441, 130 S.E. 2d 885 (1963);
>
> State v. George, 93 N.H. 408,
> 43 A. 2d 256 (1945);
>
> People v. Karoll, 315 Mich. 423,
> 24 N.W. 2d 167 (1946);
>
> People v. Kraus, 377 Ill. 539,
> 37 N.E. 2d 182 (1941)

In United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S. Ct. 811, 84 L. ed 1129 (1940), rehearing denied 310 U.S. 658, 60 S. Ct. 1091, 84 L. ed. 1421, the Supreme Court stated that:

> "Normally, of course, the material so used must be shown to opposing counsel upon demand, if it is handed to the witness." 310 U.S. at 233.

The only exceptions are grand jury minutes and certain documents used for the sole and limited purpose of refreshing the witness' recollection. United States v. Socony-Vacuum Oil Co., supra, 310 U.S. at 231-237.

Here a number of documents which belonged to the defendants, were not used for refreshing the witness' recollection but were introduced into evidence. They were handed to the witness and she was questioned and testified about them at length. Defendants' attorney volunteered to question the witness without disclosing the true name of "John Doe" but his request for the exhibit was refused (275a). In those circumstances the decision of the trial court should be reversed and the case remanded for a new trial. Cf. Jencks v. United States, 353 U.S. 657, 77 S. Ct. 1007, 1 L. ed. 2d 1103 (1957); 3 Wigmore, Evidence, §762, p. 108; 6 Wigmore, Evidence, §1861, p. 477.

When the record of the case was closed on March 23, 1967 only one (Court's Exhibit 21) of some 170 suspense files produced by defendants at the direction of the Court was in evidence. On April 10, 1967, long after the trial had ended, without notice to anyone or reopening the record or recalling a witness, the Court issued an order that 23 of the remaining 169 files were admitted in evidence and assigned Court's Exhibit Numbers 23 through 45 to them and made them a part of the record.

There was no agreement that these records were admissible for any purpose particularly in the absence of a witness who could explain them. They were produced on demand of the Court shortly after the "pre-trial hearing" of March 20, 1967 (183a-185a). Thus defendants were deprived of their right to comment, to object, to inspect or to ask questions of a witness as to these exhibits. This is reversible error. Little v. United States, 93 F 2d 401 (8th Cir. 1937); see 3 Wigmore, Evidence, §752a, p. 94 (3rd edition).

POINT IV

IT WAS REVERSIBLE ERROR TO DESIGNATE THIS CASE A CLASS ACTION AT THE END OF APPELLEES' CASE AND THEN FAIL TO GIVE NOTICE TO MEMBERS OF THE CLASS AS REQUIRED BY RULE 23 (c) (2) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

On March 23, 1967, in the midst of the final day of trial, after the close of appellees' case, despite appellants' objections, the District Court granted appellees' application to amend their action "so that it is deemed a class action" (317a-319a). The Court, moreover, failed to provide for any notice directed to the members of the alleged class as is required by Rule 23 (c) (2) of the Federal Rules of Civil Procedure.

The Court below, in allowing appellees' motion to amend their complaint, held that the questions of law and fact herein were common to the members of the class, i.e., all students and parents who were, or would be, required to attend the type of guidance conference in question here. (318a-319a). Thus, the Court found this case met the standards for a class action as defined in Rule 23 (b) (3) of the Federal Rules of Civil Procedure, which provides:

> "(b) CLASS ACTIONS MAINTAINABLE. An action may be maintainable as a class action if the prerequisites of subdivision (a) are satisfied, * and in addition:
>
> * * *
>
> "(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. * * *"

Rule 23 (c) (2) of the Federal Rules of Civil Procedure provides:

> "(c) DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.
>
> "(2) In any class action under subdivision (b) (3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who

---

* "(a) PREREQUISITES TO A CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defense of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

> does not request exclusion may, if he desires, enter an appearance through counsel."

Rule 23 (c) (3) provides that:

> "The judgment in an action maintained as a class action under subdivision (b) (3), whether or not favorable to the class, shall include or describe those to whom the notice provided in subdivision (c) (2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class."

The Advisory Committee's notes, as contained in 3 Moore's Federal Practice 35-36 (1966 Special Supplement) state:

> "Indeed, under subdivision (c) (2), notice must be ordered, and is not merely discretionary, to give the members in a subdivision (b) (3) class action an opportunity to secure exclusion from the class. This mandatory notice pursuant to subdivision (c) (2), together with any discretionary notice which the court may find it advisable to give under subdivision (d) (2), is designed to fulfill requirements of due process to which the class action procedure is of course subject. See Hansberry v. Lee, 311 U.S. 32 (1940); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); cf. Dickinson v. Burnham, 197 F. 2d 973, 979 (2d Cir. 1952), and studies cited at 979 n. 4; see also All American Airways, Inc. v. Elderd, 209 F. 2d 247, 249 (2d Cir. 1954); Gart v. Cole, 263 F. 2d 244, 248-49 (2d Cir. 1959), cert. denied, 359 U.S. 978 (1959).

> "Notice to members of the class, whenever employed under amended Rule 23, should be accommodated to the particular purpose but need not comply with the formalities for service of process. See Chafee, supra, at 230-31; Brendle v. Smith, 7 F.R.D. 119 (S.D.N.Y., 1946). The fact that notice is given at one stage of the action does not mean that it must be given at subsequent stages. Notice is available fundamentally 'for the protection of the members of the class or otherwise for the fair conduct of the action' and should not be used merely as a device for the undesirable solicitation of claims. See the discussion in Cherner v. Transitron Electronic Corp., 201 F. Supp. 934 (D. Mass. 1962); Hormel v. United States, 17 F.R.D. 303 (S.D.N.Y., 1955)."
> (Emphasis added.)

Great weight is to be given to the Advisory Committee's notes. Mississippi Publishing Co. v. Murphee, 326 U.S. 438, 66 S. Ct. 242, 90 L. ed. 185 (1946).

Here, notice was not given to the members of the class. In fact, notice was impossible since the trial ended the same day the court ruled the case presented a class action. The court below might have sent letters to all those scheduled for guidance conferences or had an appropriate notice inserted in local newspapers or taken other steps to comply with Rule 23. The court's failure to do so is in direct opposition to the mandatory requirements of the

Rule. In addition, the Court's failure to include in its order a description of those to whom notice if any was directed and who have not requested exclusion, does not meet the requirements of Rule 23 (c) (3).

In considering the question of the propriety of the District Court's order on this point, a brief review of the proceedings prior to the order will be helpful. There was first argument on plaintiffs' successful application to Judge Motley for a temporary restraining order; then a hearing on the question of a preliminary injunction which was granted followed by a pre-trial hearing. Between the pre-trial hearing and the trial, that is between March 20 and 23, 1967, appellees asked appellants informally to stipulate that this case be trated as a class action. Appellants refused (317a). Nevertheless, the case proceeded to trial and appellants assumed, since there had been no motion, no order to the contrary, and no compliance with Rule 23, that it was not a class action.

It is unquestionably true that notice to the class would have led to delay and appellees and the Court decided to move the case ahead rapidly --perhaps too rapidly. What would members of the class have done, if notified? How should the class be defined? Can it be any less in scope than all pupils enrolled in the New York City public schools and their parents? Would all of these people have chosen to be represented by appellees and their counsel? There is no remedy now for the erroneous ruling other than reversal.

Appellants not less than appellees and other members of an alleged class have a right to know prior to trial if the action is proceeding on behalf of a huge class or simply one student and his parents. The difficulties encountered in one school district in Manhattan with suspended children may not be typical of the experience in other districts. The District Court stressed the delays that sometimes result in the reassignment of suspended children. There is nothing in the record to tell us whether these delays are typical of the entire school system.

The delays referred to by the Court may have been based on its study of the 170 suspense files, produced on its instructions--only one of which, Court's Exhibit 21, was discussed in open court. Twenty-three more of these files were, pointed out above, put into evidence by the Court acting alone after the record was evidently closed. Had the case proceeded properly as a class action from the outset, appellants would have been on notice that the entire school system was involved and prepared its defenses accordingly.

If this case is deemed by this Court a class action in concept, the decision below should be reversed and the case remanded for a new trial in compliance with Rule 23.

CONCLUSION

The decision of the District Court should be reversed and the complaint dismissed or, in the alternative, the action should be remanded for a new trial.

Respectully submitted,

J. LEE RANKIN
Corporation Counsel
Attorney for Defendants

JOHN J. LOFLIN
LUIS M. NECO
of Counsel.

May 22, 1967

No. 31346

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VICTOR MADERA, RAMIRO MADERAO, MANUEL MADERA, and All Other Persons Similarly Situated,

Plaintiffs-Appellees,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, BERNARD E. DONOVAN, as Superintendent of Schools of the City of New York, THERESA RAKOW as District Superintendent of Public Schools for District One of theCity of New York,

Defendants-Appellants.

On Appeal From the District Court,
Southern District of New York

REPLY BRIEF OF DEFENDANTS-APPELLANTS

J. LEE RANKIN

Corporation Counsel

MUNICIPAL BUILDING

NEW YORK, N. Y. 10007

39-6M-131081(66) 114

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- -X

VICTOR MADERA, RAMIRO MADERA, MANUEL MADERA, And All Other Persons Similiarly Situated,

Plaintiffs-Appellees

against

No. 31346

BOARD OF EDUCATION OF THE CITY OF NEW YORK, BERNARD E. DONOVAN, as Superintendent of Schools of The City of New York, THERESA RAKOW as District Superintendent of Public Schools for District One of the City of New York,

Defendants-Appellants.

- -X

DEFENDANTS-APPELLANTS' REPLY BRIEF

Argument

POINT I

THE RIGHTS OF STUDENTS AND PARENTS ARE NOT IMPAIRED BY EXCLUSION OF COUNSEL FROM THE GUIDANCE CONFERENCE

Appellees stress in their brief the delay, interruption and even termination of public school education that may be experienced by students who have been suspended. If a student requires special treatment or institutional care and these services or facilities are not immediately available, delay may result. If the student or his parents fail to keep appointments with school officials, again, reassignment of the pupil may be delayed. Family Court proceedings, illness, relocation of the family or temporary absences from the City may also impede disposition of the problem presented.

Obviously, not all delay can be avoided. Much more expeditious handling could result from investing more money in personnel and facilities. There seems to be no basis to conclude that the presence of counsel at the Guidance Conference would lead to an increase in the special services needed by the children who experience substantial delay before being returned to the classroom.

Of some 28,000 children in School District 1, appellees claim that for 51 students about 1/3 of the total referred to the district superintendent for a suspense conference over a two year period, "the disposition made was the effective termination of their public school education (Brief p. 7)." This conclusion evidently is based on an examination of Court's Exhibits 1-17 (reports of the district superintendent on pupil suspension) and more particularly that section of these exhibits which sets forth the number of pupils discharged from school during the reporting period. The reasons for such discharge are listed as "exempted, medical, employed, moved, over 17 years of age, etc." Exemption is rarely used and then only upon order of the superintendent of schools generally upon advice of the Bureau of Child Guidance. The other factors are essentially beyond appellants' control or responsibility.

It is evident from the small numbers involved that for most suspended students, a suspension is just that - not a termination of their education. The loss of education, of course, for even one student is regrettable. Unfortunately, however, there are a few students that do not adjust to school environment, even with extensive professional help. The percentage of students who are suspended is small. The percentage of those suspended who do not return to a class as a result of action taken at a guidance conference is extremely small compared to the student body as a whole.

Appellants do not suggest however that the answers to the questions raised here can be found in the statistics of pupil suspensions. Rather it is the nature of the educational process and the proper relation between the schools and the pupils that must be considered in the search for a solution. These factors are in areas of policy where precedent is not conclusive. If incarceration were truly the question, as suggested by the court below (20a), the answer would be simpler. The district superintendent, however, has no power to confine the child - this power is reserved to the court. Nor does the district superintendent have power to adjudicate any charges against the parents. This too is reserved for the courts.

The professional competence needed to deal wisely and fairly with suspended students is found in various disciplines including education, guidance counselling, social work, psychology and psychiatry. The implications of this suit are that the members of the Board of Education's staff professionally trained in these areas are in reality opposed in interest to the students they are attempting to instruct or assist. On this assumption appellees claim a lawyer is essential at the guidance conference to defend the suspended child. This approach will not help either the child or the school.

The exclusion of lawyers is based on both practical and policy considerations growing out of the need for decisions to be made by people properly trained and authorized to make them and the belief that educational values will suffer in an adversary proceeding.

While this case tends to focus solely on the individual child on suspension, the needs of the student body as a whole should not be ignored. A disturbed, disruptive child needs help but those in classes with him including his teachers also have rights and these include the right to go about their work without excessive disturbances or threats to their safety. This does not mean that appellants claim the right to ignore the needs of difficult children. The record here shows the varied and extensive facilities and professional services set up solely to assist them.

Under the present system if the educators fail and reach an arbitrary or unwarranted decision, the student is not without relief. There can be appeals to the Commissioner of Education or Article 78 proceeding in the Supreme Court of New York - both with the right of counsel. In this way errors can be corrected, when a right to relief is shown, without taking over the internal operations of the schools.

Dur process requires no more than the right of counsel where appropriate. There is no showing that counsel at a guidance conference is required.

POINT II

THE COURT'S ACTION IN INTRODUCING INTO EVIDENCE THIRTEEN LENGTHY EXHIBITS AFTER THE CLOSE OF THE TRIAL CONSTITUTES SUBSTANTIAL ERROR. THE COURT'S ACTION IN QUESTIONING A WITNESS IN DETAIL AS TO A COMPLEX AND VOLUMINOUS EXHIBIT AND THEN REFUSING TO ALLOW DEFENDANTS' ATTORNEY TO INSPECT, OR CROSS-EXAMINE AS TO, THAT EXHIBIT ALSO CONSTITUTES SUBSTANTIAL AND PREJUDICIAL ERROR.

Appellees' brief states that the Court's actions in the use of sealed exhibits constitutes harmless error and is of little moment (Brief pp. 29-35).

A. Court Exhibits 23 through 45

At the heart of the instant proceeding is the Board of Education's policy of excluding attorneys from the guidance conference, the nature of that conference and the consequences thereof.

In arriving at its determination the Court concluded that the sealed exhibits were important to its view of how the exclusion-of-attorneys policy "actually operates" (185a) and to "give theCourt additional facts" with regard thereto (264a). As stated by the Court, the sealed documents constituted "the best evidence" before it (183a). Thus, the Court stated:

> "Now, as I started to say, I think that the only way to clarify these various charts and things is by the records themselves, and that is because the questions which you raise in this case, that is, the plaintiffs, to me present serious questions which should not be decided on a record which is incomplete and leaves many questions unanswered when the best evidence is the records themselves rather than these summaries of the records.
>
> "It think it is important to have a case of this kind as complete as possible with respect to the testimony in the record because it involves grave constitutional questions which, as I say, should not be decided on an incomplete record." (183a-184a).

It is clear that the sealed documents were introduced into evidence by the Court because they were, to the Court, "the best evidence" and essential to a decision as to "grave constitutional questions." (supra). It is difficult to see how the use of such evidence without explanatory testimony constitutes harmless error.

B. Court Exhibit 21

Court Exhibit 21 consists of over fourteen separate documents of from one to six pages each (264a-274a). Some of the documents deal with the issue of the commitment or placement of a child in an institution (271a). That issue is undoubtedly one of the most critical aspects of this case.

Court Exhibit 21 also contained numerous handwritten notes by persons other than the witness which, in the witness' words "would have to be interpreted ... by the person who took them." (269a) Finally, so complex and unclear were the documents that the Court admonished the witness for evading in testifying about them (271a). The witness, however, denied evading (271a). Clearly what appeared to the Court to be evasion was the inability of the witness to testify with precision as to handwritten notes by another person. At the least, if defendants' attorney had been given an opportunity to examine the documents in question he might have called the proper witness to testify for the sake of clarifying any areas left unclear by Miss Rakow.

So extraordinary were the Court's actions that appellants' attorneys have been unable to discover a comparable case. Thus, in view of the obvious use made by the Court of all the sealed exhibits in resolving "grave constitutional issues" and the Court's reliance upon such documents as "the best evidence" before it, there can be no doubt that the Court's procedure was prejudicial.

POINT III

IT IS CLEAR FROM APPELLEES AMENDMENT OF THEIR COMPLAINT THAT THE INSTANT PROCEEDING IS A CLASS ACTION GOVERNED BY RULE 23 (b)(3).

Appellees urge that the instant proceeding is governed by Rule 23 (b)(2). However, in amending their complaint appellees advanced grounds therefor which, in accordance with the Advisory Committee's Notes, bring the proceeding within the provisions of Rule 23 (b)(3). Thus, the appellees stated, at the trial on March 23, 1967:

> "Mr. Sugarman: 'I now move to amend this action to be deemed a class action in which the plaintiffs are all members of a class for which a guidance conference is scheduled under circular No. 16, 1965-1966, or any parallel provision of the Department of Education.
>
> "I think the questions involved in all these cases are common to all of them, I think the defenses that are raised are the same defenses which will be raised in all of them. I think there are enough of these that might engender or there might possibly be a whole multiplicity of suits to raise the same issues and I think all of these things can be resolved by a decision by this Court.'" (318a)

The elements relied upon - common questions, similar defenses and the possibility of a multiplicity of suits - are peculiarly applicable to class actions pursuant to Rule 23 (b)(3). 3, Moore's Federal Practice 31-32 (1966 Special Supplement).

Since this is a class action pursuant to Rule 23 (b)(3) the Court was required to give some form of notice to the members of the class (Appellants' Brief, pp. 40-46). Failure to do so constitutes reversible error.

CONCLUSION

The decision of the District Court should be reversed and the complaint dismissed or, in the alternative, the action should be remanded for a new trial.

Respectfully submitted,

J. LEE RANKIN
Corporation Counsel
Attorney for Defendants

JOHN J. LOFLIN
LUIS M. NECO
of Counsel.

June 7, 1967

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

VICTOR MADERA, RAMIRO MADERA :
and MANUELA MADERA,
:
Plaintiffs,
:
-against- : 67 CIV. 635
:
BOARD OF EDUCATION OF THE CITY
OF NEW YORK, et al., :
Defendants. :
- - - - - - - - - - - - - - - - - - x

PERMANENT INJUNCTION

This cause came on by way of plaintiff's motion for a preliminary injunction, the hearing of which was consolidated with the trial on the merits. The court having heard the testimony and having examined the proofs offered by the respective parties and having on April 10, 1967 filed herein its opinion embodying its findings of fact and conclusions of law, concluding that enforcement of the "no attorneys provision" of Circular No. 16 violated plaintiffs right to due process guaranteed to them by the Fourteenth Amendment to the United States Constitution and having directed that judgment be entered in accordance with said opinion; now, therefore, by reason of the law and findings aforesaid:

It is hereby ORDERED, ADJUDGED and DECREED that the defendants, their employees, servants, agents, successors and all persons in active concert and participation with them be, and they are hereby, perpetually enjoined and restrained from 1) refusing to proceed immediately with the previously scheduled District Superintendent's Guidance Conference of plaintiff Victor Madera and, 2) from enforcing the "no attorneys provision" of Circular No. 16 (1965-1966) p. 5, or any similar provision barring the attendance of attorneys at the Conference defendants are now directed to hold or at any other such District Superintendent's Guidance Conference where the attorney is selected by the child or his parent(s) as their spokesman or representative.

Dated: New York, New York
April 11, 1967.

CONSTANCE BAKER MOTLEY

U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BOARD OF EDUCATION OF THE
CITY OF NEW YORK, et al,
Defendants - Appellants,

-against-

VICTOR MADERA, RAMIRO MADERA,
And MANUELA MADERA,
Plaintiffs- Appellees.

NOTICE OF
MOTION

Docket #
31346

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of CARL RACHLIN, ESQ., sworn to the 31st day of May, 1967, and upon all papers and proceedings heretofore had herein, the undersigned will move this Court, at a Motion Term to be held at the United States Courthouse, Foley Square, New York, New York, on the 5th day of June, 1967 at 10:30 a.m., or as soon thereafter as counsel can be heard for an order: (1) granting leave to the American Jewish Congress, Aspira, Inc., Big Brothers, Inc., The Catholic Interracial Council, The Citizens Committee for Children of New York, Inc., The Congress of Racial Equality, Inc.,EQUAL, Harlem Neighborhoods Association, Inc., Massive Economic Neighborhood Development, Inc., The National Association For the Advancement of Colored People, Inc.,The New York Civil Liberties Union,The People's Board of Education,The Public Education Association,The Puerto Rican Association for Community Affairs,the Puerto Rican Forum, Scholarship Education & Defense Fund For Racial Equality, Inc.,The Social Service Employees Union,the United Welfare League, The Strykers Bay Neighborhood Council,The United Parents Associatio the Urban League of Greater New York and Bedford-Stuyvesant Youth In Action, Inc.,to file a joint brief as Amici Curiae;

(2) Granting leave to RHODA KARPATKIN, ESQ., as attorney for Amici to present an oral argument on their behalf;and (3) permitting the above named Amici to dispense with printing of the brief in favor of legibly reproduced typewritten briefs reproduced by Xerography, and for such other and further relief as this court may deem just and proper.

Dated:New York, N.Y.
May 31, 1967

Yours, etc.
CARL RACHLIN
STEPHEN M. NAGLER
Scholarship, Education & Defense
Fund for Racial Equality.
New York, N.Y. 10038

Rhoda Karpatkin
660 Madison Avenue
New York, N.Y.

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New York Civil Liberties Union
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David Haber
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Leah Marks
Citizens Committee for Children
112 E. 19th Street
New York, N.Y. 10003

William A. White
Harlem Neighborhood Associations,Inc
740 St. Nicholas Avenue
New York, N.Y.

ATTORNEYS FOR MOVANTS

TO: Harold Rothwax, Esq.
Mobilization For Youth, Inc.
Attorney for Appellees

J. Lee Rankin
Corporation Counsel
City of New York
Attorney for Appellants

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BOARD OF EDUCATION OF THE
CITY OF NEW YORK, et al,
Defendants - Appellants

-against-

VICTOR MADERA, RAMIRO MADERA,
And MANUELA MADERA,
Plaintiffs-Appellees.

AFFIDAVIT

STATE OF NEW YORK)
:SS:
COUNTY OF NEW YORK)

CARL RACHLIN, being duly sworn, deposes and says:

1. I am legal director of the Scholarship, Education and Defense Fund for Racial Equality and a member of the Bar of the State of New York. I make this affidavit in support of the application of the

American Jewish Congress
Soc Social Service Employees Union
Aspira, Inc.
Big Brothers, Inc.
Catholic Interracial Council
Citizens Committee for Children of New York, Inc.
Congress of Racial Equality, Inc.
EQUAL
Harlem Neighborhoods Association, Inc.
Massive Economic Neighborhood Development, Inc.
National Association for the Advancement of Colored People
New York Civil Liberties Union
People's Board of Education
Public Education Association
Puerto Rican Association for Community Affairs, Inc.
Puerto Rican Forum
Scholarship, Education and Defense Fund for Racial Equality
Stryckers Bay Neighborhood Council
United Parents Association
United Welfare League
New York Urban League
BED-STUY Y.I.A.

to file a joint brief on behalf of all amici AND (B) present by RHODA KARPATKIN, and oral argument, as Amici Curiae AND to dispense with the printing of said brief.

2. Movants by STEPHEN M. NAGLER, Esq. have, by telephone, on or about the 29th of May, 1967, sought and secured the consent of both attorneys for appellants (J. Lee Rankin, Esq., Corporation Counsel of the City of New York by John J. Loflin,Esq.) and attorneys for appellees, (Harold Rothwax, General Counsel, Mobilization for Youth , by Robert Sugarman), to the granting of all of the Relief requested herein.

3. As appears more fully below, all Movants are vitally interested in preserving every child's right to an education, an indispensable need in modern society and without which the ability to rise out of the slum is diminished. As organizations interested in improving educational services for children and/or as organizations concerned with the civil rights and civil liberties of all, amici have become acquainted with the procedures and actual practices used in deciding to suspend students from school in New York City, and are convinced these procedures and the lack of educational service which frequently results after suspension of students constitute a violation of every child's right to an education as well as the basic right to fundamental fairness .

Amici have learned that many children and parents have been adversely affected by the present school suspension system under which unfair suspensions have taken place because neither parents nor children have been able to present their side of the story. The right to question the accuracy of those presenting specific complaints about the child's behaviour has been denied, and no trained adult has been permitted to speak for the child. Despite the fact that the Board of Education of the City of New York clings to the theory that suspension proceedings are part of a continous educational guidance program for the child, the Movants have learned often through the experience of their members, that the theory is a fiction and that the proceedings are in reality commonly used as periods of recitation of a child's alleged misdeeds closed by a decision as to the disposition of the child, with no opportunity for discussion, questioning the alleged facts, or suggestion as to disposition on the part of the parent;and no prior notice to the parent of the charges to be presented. Movants view the resulting deprivation, the often substantial loss of time, the perhaps severe consequences which may follow, including the loss of liberty as too serious to be permitted without reasonable regard for fair process. It is with the objective of presenting these views that Movants seek leave to appear as amici curiae . The right to counsel, Movants would contend would help to fulfill the requirements of fundamental fairness.

The American Jewish Congress seeks, among other things, to improve the quality of urban education and to protect the rights of minority groups within the public educational system.

ASPIRA, Inc. is an organization devoted to breaking down the three major barriers facing Puerto Rican youngsters who want to improve their education;language,inadequate counseling and financial need.

Big Brothers, Inc. is a non-sectarian and interracial New York membership corporation, organized and operating in the City of New York since 1909. Through the efforts primarily of individual male volunteers, it serves to prevent juvenile delinquency and to promote the physical, mental and moral welfare of boys.

The Citizens' Committee for Children is a membership organization with expert and direct knowledge of schools,

Citizens' Committee/

hospitals, courts, clinics, institutions, and related agencies. As active citizen leaders in voluntary and public programs, and from the perspective of the educator, the judge, the lawyer, the criminologist, the psychiatrist, the social worker and the social scientist, CCC is concerned with the problems and protection of children and their families.

The Congress of Racial Equality has long been involved in the improvement of schools and the quality of education made available. The correlation between discrimination and poorer education is clear. CORE is a national membership organization with active chapters in New York City.

EQUAL is a city-wide civic organization concerned with equal educational opportunity for all children, supplying statistical information about school to parents and advising them about school procedures.

Harlem Neighborhood Associations is a 25 year old service organization representing various social, cultural, educational and religious groups working in the Harlem area for the advancement and improvement of the community and its residents. As part of HANA's educational program it has become increasingly concerned with the practices of the Board of Education with respect to the suspension of children from the public school system.

Massive Economic Neighborhood Development, Inc. as an anti-poverty program seeks to join as amicus curiae because in the area in which it operates - East Harlem - the abuses pointed up relating to student suspensions have plagued the MEND, Inc. educational committee. Many students in East Harlem are suspended from school for long periods of time without apparent justification.

The NAACP, a membership corporation incorporated under the laws of the State of New York, has as its principal purpose the elimination of every vestige of life. Incident to this purpose it has sought not only the desegregation of public schools throughout the country, but also the elimination of any practice which disadvantages Negro school children.

The New York Civil Liberties Union, an affiliate of the American Civil Liberties Union, is an organization dedicated to the preservation of our constitutional guarantees, including the rights guaranteed to students at a public educational institution.

The Public Education Association, founded 71 years ago, is a non-profit membership corporation chartered by the Board of Regents and is composed of citizens working for the improvement of the public schools and colleges in the City of New York. Its charter provides that its objects "shall be to study the problems of public education, investigate the condition of the common and corporate schools, stimulate public interest in the schools, and to propose from time to time such changes in their organization, management or educational methods as may seem necessary or desirable."

The Puerto Rican Association for Community Affairs is a fourteen year old civic organization with the purpose of channeling and developing second generation leadership in the Puerto Rican New York community. Action on social issues is the organization's means of carrying out its purposes, and education is its major field of endeavor.

The Puerto Rican Forum is a non-profit organization dedicated to the development of leadership and institutions within the Puerto Rican community of New York. It was founded in 1954 for the purpose of identifying, training, and utilizing the skill and talents of Puerto Rican New Yorkser for the benefit of the entire community.

Scholarship, Education and Defense Fund for Racial Equality,(SEDFRE) is a national service organization devoted to development of equal protection of the law and the abolition of racial discrimination. Since education is one of the major area whereby discrimination may be eliminated SEDFRE has long concerned itself with improving the quality and techniques of education and the communication of ideas.

Stryckers Bay Neighborhood Council is a federation of organizations and institutions on the west side of Manhattan. From the earliest the Counsil has been concerned with the local educational problems and with the problems of youngsters who have been deprived of an education.

United Parents Association is a federation of 430 parents and parent teacher associations in the public schools of New York City, representing parents of children of every race, creed, color and national origin in the City's schools.

The United Welfare League is an organization of welfare recipients living on the west side of Manhattan. Most of the membership is made up of mothers of school age children concerned about the difficulty of establishing meaningful communications with school officials when problems arise.

The New York Urban League is a non-profit, volunteer social welfare organization that operates in the area of education, employment, housing, health and welfare. We are primarily concerned with obtaining equal opportunities for minority groups in these areas. The right of each child to an education must not be abrogated by the inability or unwillingness of the local school officials to deal creatively with dicipline problems that occur in the classroom.

Bedford-Stuyvesant Youth-In-Action, Inc., a community corporation established under the Economic Opportunity Act of 1964, is charged with the responsibility of aiding poor people and as such is vitally concerned with the educational system. It is self evident that poverty and poor education go hand in hand.

The New York City People's Board of Education is an organization fighting for quality education for all children, especially Afro-American and Spanish speaking children who are the victims of what it regards as an irresponsible Board of Education. The People's Board seeks to appear as Amicus in this case because from its knowledge and experience concerning suspensions, it feels that children are being suspended illegally, unfairly and with no regard for the tragic consequences and because there is no adequate follow-up of children being suspended.

The Catholic Interracial Council of New York composed of white and Negro Catholics was founded in 1934 to combat racial bigotry and discrimination. It is active in the in the continuing struggle to secure for minority groups the same rights and privileges that other Americans already enjoy.

The Social Service Employees Union represents 8000 case workers, childrens' counselors and homemakers in the New York City Department of Welfare in contact with many deprived families in New York City. SSEU understands how the lack of education contributes to the cycle of poverty and dependency and therefore SSEU has a deep concern for the rights of these children to a full education.

5. Movants and their Attorneys active in the preparation of a brief are donating their services without compensation for their efforts in this case, Furthermore, several of the Movant organizations and/or their members are indigent and can not afford the cost of printing a brief.

WHEREFORE, Movants respectfully request that an order be entered permitting Movants to submit a brief as Amici Curiae, the printing of which would be dispensed with in favor of typewritten briefs reproduced by xerography, and permitting Movants as Amici Curiae to present oral argument by RHODA KARPATKIN, ESQ.

Carl Rachlin

CARL RACHLIN

Sworn to before me

this 1st day of June, 1967

James J. DiStefano

JAMES J. DI STEFANO
COMMISSIONER OF DEEDS
City of New York 2-250
Certificate filed in New York County
Commission Expires Dec. 13, 1968

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

BOARD OF EDUCATION OF THE
CITY OF NEW YORK et al,

APPELLANTS

-against-

VICTOR MADERA, RAMIRO MADERA

AND MANUELA MADERA,

APPELLEES.

Appeal from the United States District
Court, Southern District of New York

BRIEF FOR AMICI CURIAE

June '67
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10. The District Superintendent's Suspension Hearing can result, inter alia, in a depriviation of the Child's Constitutional Right to an education, to his Liberty and his Property. Therefore the Due Process clause of the Fourteenth Amendment is applicable.

15. General Circular No.16, 1965-1966 dated April 18, 1966, of Defendant Board of Education of the City of New York, insofar as it prohibits representation by Counsel for the Child and Parents at the District Superintendent's Suspension Hearing ("Guidance Conference") violates their Right to Liberty and Property guaranteed by the Fourteenth Amendemnt to the United States Constitution.

23. Point II.
General Circular No. 16, 1965-1966 dated April 18,1966, of Defendant Board of Education of the City of New York, insofar as it fails to require notice to the Child and Parent of the Charge against the Child and an opportunity to hear and respond to the evidence, violates the Child's Rights under the Fourteenth Amendment.

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INTEREST OF AMICI

This brief is submitted on behalf of the organizations listed below, pursuant to leave to file a brief in this proceeding granted by this court 5th day of June, 1967.

All amici are vitally interested in preserving every child's right to an education, an indispensable need in modern society and without which the ability of the slum child to rise out of his envirnoment is impaired. As organizations interested in improving educational services for children, or as organizations concerned with the civil rights and civil liberties of all, amici have become acquainted with the procedures and actual practices used in suspending students from school in New York City, and are convinced these procedures, and the frequent absence of educational services following the suspension of students, constitute a violation of every child's right to an education.

Amici contend that many children and parents have been harmed by the present school suspension system. The right to question the accuracy of the specific complaints about his behavior has been denied, and no provision is made for any other person to appear for or with the child or parents. Despite the educational system's adherence to

/the theory that the

The theory that the suspension proceedings are part of a continuous educational guidance program for the child, amici view the resulting deprivation, the often substantial loss of time, the perhaps permanent effects, as too serious to be permitted without due regard to fair process. With this objective, this brief is submitted in behalf of the following organizations:

American Jewish Congress, New York Metropolitan Council
ASPIRA, Inc.
Bedford-Stuyvesant Youth In Action, Inc.
Big Brothers, Inc.
Catholic Interracial Council
Citizens Committee for Children of New York, Inc.
Congress for Racial Equality, Inc
EQUAL
Harlem Neighborhood Association, Inc.
Massive Economic Neighborhood Development, Inc,
National Association for the Advancement of Colored People
New York Civil Liberties Union
New York Urban League
People's Board of Education
Public Education Association
Puerto Rican Association for Community Affairs, Inc.
Puerto Rican Forum
Scholarship, Education and Defense Fund for Racial Equality, Inc.
Stryckers Bay Neighborhood Council
Social Service Employees Union
United Parents Association
United Welfare League

Amici are aware that in dealing with children with records of misbehavior, a guidance orientation is desirable. Amici believe, however, that when suspension procedures are invoked, as in this case, which can result in a deprivation of a most valuable right guaranteed by the Constitution and by statute - the right to an education - and can lead to possible loss of liberty, the child is entitled to the

/requisite elements

requisite elements of due process of law. Amici believe that to accord the child the protection of due process will not in any way vitiate the guidance and supervision to be provided by the school to the child, but will serve the school and the child by helping to teach a just and reasonable disposition in each suspension proceeding.

STATEMENT OF THE CASE

Victor Madera, the minor plaintiff herein, a 14 year old schoolboy in the New York City public school system, was suspended by his principal. Thereafter, his mother (also a plaintiff herein), who does not speak English, received notice from the District Superintendent advising that a conference would be held concerning her son's suspension, and requesting that she bring Victor. When notified by an attorney for plaintiffs that he planned to accompany them to the hearing, the District Superintendent advised him that the attorney would not be permitted to attend.

Victor's suspension, and the scheduled hearing, were effected pursuant to Board of Education of the City of New York General Circular No.16, entitled "Pupil Suspension" (hereinafter G.C. No.16).

Upon application by plaintiffs - appellees, the United States District Court, Southern District of New York, enjoined the appellants from barring attorneys representing children and parents at suspension hearings. Madera vs. Board of Education F. Supp. Opinion by Hon. Constance B. Motley, USDJ,----1967.

1. APPELLANT'S ARGUMENT - PROHIBITION OF ATTORNEYS FROM REPRESENTING PARENTS AND CHILDREN AT DISTRICT SUPERINTENDENT'S SUSPENSION HEARING ("GUIDANCE CONFERENCE") VIOLATES THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION DEPRIVING APPELLEES OF LIBERTY AND PROPERTY WITHOUT DUE PROCESS OF LAW.

Free Public Education Is a Constitutional Right

Appellee Victor Madera has attended a free public school by virtue of a right granted to him by the New York State Constitution. The New York State Constitution, Article XI, §1, endows him with this right by requiring that:

> "The legislature shall provide for the maintenance and support of a system of free commen schools, wherein all the children of this State may be educated."

In implementation of this right, the New York Education Law §3201(1) provides:

> "A person over five and under twenty-one years of age is entitled to attend the public schools maintained in the district or city in which such person resides without the payment of tuition."

Education is more than a right: It is so essential to the child and to his society that it is compulsory. The Education Law (§3205(1)) compels the child to attend:

> "In each school district of the State each minor from seven to sixteen years of age shall attend upon full time day instruction."

/Moreover

Moreover, the parent or guardian of a child is required to "cause (the) minor to attend upon instruction". (New York Education Law § 3212(2) (b).

NEW YORK LAW PROVIDES FOR THE SUSPENSION OF CERTAIN CHILDREN FROM REGULAR CLASSES

According to information from the Board of Education in the year 1965-1966, 10,202 children were suspended by their principals and 2,539 by their District Superintendents. In addition, 862 District Superintendents' suspensions were carried over from the previous year, for a total of 3,401 children on District Superintendents' suspension for that year. (See Report on School Suspensions of Citizens' Committee for Children of New York, Inc., October 20, 1966, P.3)

It is apparent, therefore, that pupil suspension is a problem affecting a very substantial number of children each year.

In addition, the fact that more than eight hundred were carried over from one year to the next is an indication that probably substantial loss in school time was involved.

The Education Law defines the kind of child who may be deprived of his right to a free public education, and the manner in which he may be so deprived. While such a child is today generally described as a "disruptive" child, the statute uses the term "school delinquent".

A "school delinquent" is defined in New York Education Law §3214(1), as "A minor under seventeen years of age, required by any of the provisions of part one of this article to attend upon instruction, who is an habitual truant from such instruction or is irregular in such attendance . . ." He may be required, pursuant to such section, to attend at a "special day school", or "parental school" or school authorities may make arrangements for the instruction, confinement and maintenance of school delinquents elsewhere. However, this must be done after notice and hearing. §3214(5) provides:

> "5. Commitment and parole of a school delinquent. a. Hearing. After reasonable notice to a school delinquent and to the person in parental relation to him and an opportunity for them to be heard, a public school official, as hereinafter provided, may, with the consent in writing of the person in parental relation to the school delinquent, order him to attend a special day school, or to attend upon instruction under confinement at a parental school or elsewhere, as hereinbefore provided, for a period not exceeding two years but in no case after the minor reaches the maximum age of required attendance upon instruction." (Emphasis added)

Accordingly, §3214(6) provides for suspension from school:

> "6. Suspension of a minor. a. The school authorities, the superintendent of schools, or district superintendent of schools may suspend the following minors from required attendance upon instruction.
>
> (1) A minor who is insubordinate or disorderly;
>
> (2) A minor whose physical or mental condition endangers the health, safety, or morals of himself or of other minors . . ."
>
> b. Procedure after suspension. In the case of a minor who is suspended as insubordinate or disorderly, immediate steps shall be taken for his commitment as provided in this section, or for his attendance upon instruction elsewhere; in

/the case of

> the case of a minor suspended for other cause, the suspension may be revoked whenever it appears to be for the best interest of the school and the minor to do so."

> 7. b. . The school authorities may institute proceedings before a court having jurisdiction to determine the liability of a person in a parental relation to contribute towards the maintenance of a school delinquent under sixteen years of age ordered to attend upon instruction under confinement . . ."

In addition, the Superintendent of Schools has the power to "exempt" (i.e. expel) a pupil from attendance at public schools. (N.Y. Education Law §3208).

The Board of Education has assigned to the District Superintendent the authority to deal with the child who "remains" so "disruptive" or "maladjusted" that drastic action must be taken: "he must be considered for removal from the school setting". G.C. No.16 (II) The Board states that with respect to suspension, "it is recognized that authoritative steps may be necessary but in general the approach should be therapeutic rather than punitive. G.C. No.16 (II).

The procedures to be used by the District Superintendent before he suspends a child are mandated by defendant Board of Education in G.C. No.16. G.C. No.16 explicitly prohibits the appearance of an attorney to represent the child or parent.

> "A district superintendent will arrange for a guidance conference to be conducted within 10 school days of the date of his receipt of the principal's notice to the parent. The District Superintendent over his name will send a notice of the time and place of such conference to the

> parent, school principal and any other appropriate personnel he may wish present. In addition, the Bureau of Attendance will be responsible for notifying the parent to attend the conference. The Bureau will be given at least five school days for this notification. Inasmuch as this is a guidance conference for the purpose of providing an opportunity for the parents, teachers, counselors, supervisors, et al to plan educationally for the benefit of the child, attorneys seeking to represent the parent or the child may not participate." (Emphasis added)

Much of G.C. No.16 is involved herein as relates to the suspension hearing as scheduled by the District Superintendent for appellees, most especially its prohibition of representation by counsel for the suspended pupil and his parent at such hearing .

While described throughout G.C. No.16 as a "guidance conference", that designation is merely a euphemism. The real nature of the hearing is clearly revealed in the possible decisions which the District Superintendent may hand down. At such a suspension hearing the District Superintendent is directed by the Circular to reach a"decision concerning the disposition of the case" within five days. This decision may include:

1. "Reinstatement"
2. "Transfer to another school"
3. "Referral for placement in a school for socially maladjusted children";
4. "Referral to Bureau of Child Guidance or other suitable agency for study and recommendations, including medical suspension, home instruction, or exemption"
5. "Referral to the Bureau of Attendance for court action", in which case "school personnel will make themselves available for testimony in court". (G.C. No.16 III C-5) (Emphasis added)

/Exemption is

Exemption is defined in footnote 2 to G.C. No.16 as 'withdrawal of a child's right to attend a public school".

Only the first two dispositions continues the attendance of the child at a normal school. All other possibilities result in the continuation of the child's education at a stigmatized school, or continuation of the suspension or infliction of even harsher penalties. The Circular explicitly recognizes that for some suspended students, "school placement or other appropriate disposition is not possible", in which case the District Superintendent "is empowered" to continue the suspension for what amounts to an indefinite period, i.e. "until there is available a resource which will allow for the adequate and required instruction of the suspended pupil". (G.C. No16 III (6))

THE DISTRICT SUPERINTENDENT'S SUSPENSION HEARING CAN RESULT, INTER ALIA, IN A DEPRIVATION OF THE CHILD'S CONSTITUTIONAL RIGHT TO AN EDUCATION, TO HIS LIBERTY AND HIS PROPERTY. THEREFORE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT IS APPLICABLE.

On the face of G.C. No.16 alone, it is clear that to call this procedure a "Guidance Conference" (G.C. No.16-III-C) is to employ a misnomer, notwithstanding that the introduction to the Circular seeks to depict this procedure merely as part of the child's educational continuum and nothing more:

/"The suspension

> "The suspension procedure must be considered a part of a continuous educational guidance program for the child and his peers. Principals' and district superintendents' guidance conferences, in relation to suspension, provide an opportunity for parents, teachers, counselors, supervisors, et al., to plan educationally for the benefit of the child. For that reason the Circular stresses that attorneys seeking to represent the parent or the child at any of these conferences may not participate."
> (Covering letter of Executive Deputy Superintendent attached to G.C. No.16)

Not only on its face, but in fact as well, it is clear that it is precisely because the school system's educational guidance program has failed with respect to the particular child, and allegedly more drastic action is required, that a suspension hearing is held.

In the context of a suspension hearing, defendant's use of the words "guidance" and "therapy" is meaningful only if the definitions are understood to encompass penalty and punishment. For while it may be argued that suspension, expulsion (or indeed even confinement and imprisonment) provide a certain kind of "guidance" and "therapy", in actuality, such "guidance" represents a substantial penalty imposed on the pupil: he is prevented from attending a free public school, a right granted him by the Constitution and by statute.*

Urging a "therapeutic approach" Part II of G.C. No.16 acknowledges clearly:

/"If after

---

*He may be consigned to a special school for delinquents (G.C. No.16-III-C-5), or he may be respondent in proceedings pursuant to Education Law §3214(6) and (7)

> "If after all available remedial procedures have been applied a pupil remains disruptive or maladjusted to the extent that he does not profit from instruction or that he prevents other pupils from learning, he must be considered for removal from the school setting."

Disposing of the therapeutic approach the Circular refers itself to the "failure" of attempts to help the child.

The nature of this hearing is further revealed by the requirement that prior to it, the principal must send to the District Superintendent "copies of a report on the pupil's acts of misbehavior in chronological order. The statement will also include the time, place and nature of the precipitating cause of suspension . . ." (G.C. No.16-III-C-3). The principal is also required to bring with him to the suspension hearing, the child's official records of various kinds. (G.C. No.16-III-C-3). Moreover, at the hearing, "the parent and child should be helped to understand the seriousness of the problem . . ." (G.C. No.16-III-C-4) The fact of suspension follows the child through life: if the District Superintendent decides to suspend the pupil, the Circular requires that "Appropriate notation of the suspension will be recorded in the roll book and on the pupil's cumulative record card." (G.C. No.16-III-C-8).

It is therefore, unmistakable from G.C. No.16 that suspension hearing is held when an act of misbehavior is alleged to have occurred.

Following such suspension hearing, the District Superintendent is empowered to take drastic action involving a severe deprivation or

/penalty,

penalty, ranging from placement in a school for delinquents or continued suspension, to recommendations for exemption (expulsion). The District Superintendent can also refer the case to the Bureau of Attendance "for court action" leading to possible loss of liberty, in which case "school personnel" (presumably some of the same persons who attended the suspension hearing) must testify in court. G.C. No.16-III-C-5.

The nature of the court action is set forth in the statute. Compelling the 'commitment" of the minor, section 3214 (5) provides that after notice and hearing, a public school official "may, with the consent in writing of the person in parental relation to the school delinquent, order him to attend a special day school, or to attend upon instruction under confinement at a parental school or elsewhere for a period not exceeding two years" (emphasis added).

Should the parent be unwilling to "consent" to the "commitment" of the child, i.e., the child's "confinement" and loss of liberty, Section 3214 (5) (C) (1) directs that "such persons shall be proceeded against for violating the provisions of section thirty-two hundred twelve" (dealing with duties of parents respecting school attendance). Were the court to find that the parent did not violate Section 3212 of the Education Law, Section 3214 (5) (C) (2) requires that a "proceeding shall be brought against the minor for violation" of the compulsory attendance requirements. Moreover, §3214 (6) (b) requires that "in the case of a minor suspended as insubordinate or disorderly, immediate steps shall be taken for his *commitment*, as provided in this section". (Emphasis added)

It is apparent, therefore, that significant deprivations may be visited on a child as an ultimate consequence of a suspension hearing, including loss of liberty.

Attendance at a free public school is a state constitutional right. (Article XI §1) While it is a most precious right for *every* child, it is especially precious for children who cannot afford private school, and for the children of minority groups. It is an essential ingredient in the process by which such children mature into citizens of a democratic society. "Even the least-schooled migrant knows the value of education: Puerto Ricans universally would like to see their children well educated, and hope they will be professionals." - Glazer and Moynihan, *Beyond The Melting Pot* p.127 (1963). See also Hutchings Hapgood, *The Spirit of The Ghetto* p.28 (1966) concerning the Jewish immigrant child in 1902: "(In the public schools) English becomes his most familiar language. He achieves a growing comprehension and sympathy with the independent, free, rather, skeptical spirit of the American boy . . ." And see Silberman, *Crisis In Black and White* pp.224-5 (1965): "If Negro youngsters are to have a chance, the public schools will have to educate them, for education is rapidly becoming the principal form of capital in the United States."

The child's public school education will directly affect his employment for the remainder of his life. His educational level

/and resulting

and resulting employment limitations will dictate where he can afford to live, how he can afford to dress, the nature of his recreational and cultural activities, and almost every other material factor in his life. "In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." Brown v. Board of Education, 347 U.S. 483, 493 (1954).

The decision below refers to the testimony of the Director of the Bureau of Child Guidance to the effect that most of the children involved in administrative suspension hearings are members of "multi-problem families", an expression the Court took as an synonym for the urban poor. For these children especially, the right to continue their schooling is of such significance that to interfere substantially (by suspension) or to terminate it is a substantial deprivation of a property right.

Accordingly, *Amici* urge that the court below was correct in concluding that the due process clause of the Fourteenth Amendment is applicable to a District Superintendent suspension hearing.

GENERAL CIRCULAR No.16, 1965-1966 DATED APRIL 18, 1966, OF DEFENDANT BOARD OF EDUCATION OF THE CITY OF NEW YORK, INSOFAR AS IT PROHIBITS REPRESENTATION BY COUNSEL FOR THE CHILD AND PARENTS AT THE DISTRICT SUPERINTENDENTS SUSPENSION HEARING (GUIDANCE CONFERENCE) VIOLATES THEIR RIGHT TO LIBERTY AND PROPERTY GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

/The procedures

The procedures mandated by General Circular No.16 violate the due process clause of the Fourteenth Amendment because they do not accord to the child the requisite elements of a fair hearing, notably, the right to be represented by counsel.

A student expelled or suspended from college is entitled to notice and a fair hearing. Dixon v. Alabama State Board of Education, 294 F 2d 150 (5th Cir. 1961) cert den.368 U.S. 930; Knight v. State Board of Education, 200 F.Supp.174 (M.D. Tenn. 1961). See also Seavey, "Dismissal of Students", 70 Harvard Law Review 1406 (1957).

In Dixon a state supported college dismissed six students. The Court of Appeals for the Fifth Circuit enunciated the doctrine that such students were entitled to procedural due process:

> "Whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law. The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved." 294 F. 2d at 155

The extensive rights which the Court in Dixon held to be requirements fo due process of law in a student expulsion hearing included the following "rudiments of fair play": names of witnesses and written reports of their testimony, an opportunity to present his defense and to produce oral testimony or written affidavits. 249 F. 2d 150, at 159.

The basis for the Dixon decision is the same as that urged herein: the interest of the students to continue their college education was of "extremely great value". The interest of appellee

/here is even

here is even greater: he cannot choose another institution, and he has not yet achieved the minimum necessary education.

Moreover, while the rights granted in Dixon might conceivably be exercised by a mature college student, it is not at all possible that a seventh grade child or his Puerto Rican mother could sift through the facts and prepare an oral or written defense, without the assistance of counsel.

In view of the severe deprivations which can result from a suspension hearing the ingredients of a fair hearing must be provided while they may be flexible with respect to individual circumstances, the right to counsel must be included. That essential element of due process was denied appellee herein by virtue of the regulation of appellant barring attorneys (G.C. No.16-III-C-4)

Even before recently decided Gault, U.S. (1967), the Supreme Court held that representation by counsel was a mandatory element of due process in juvenile offender proceedings to determine whether to waive jurisdiction over a minor and leave him to a criminal proceeding. In Kent v. U.S., 383 U.S. 541 (1966) the Supreme Court held:

> "We do not consider whether, on the merits, Kent should have been transferred; but there is no place in our system of law for reaching a result of such tremendous consequences without ceremony - without hearing, without effective assistance of counsel, without a statement of reasons. It is

/inconceivable

> inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children . . . permitted this procedure. We hold that it does not." Id. at 561.
>
> "We do not mean by this to indicate that the hearing to be held must conform with all of the requirements of a criminal trial even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment." Id. at 562.

Defendant's argument below that because this is a "guidance conference", attorney representation is barred, has been disposed of most recently by the Supreme Court, in Gault. Disapproving of juvenile proceedings which stripped children of their constitutional rights in the name of "guidance", the Court held that the Fourteenth Amendment's Due Process Clause required representation by counsel in a Court proceeding which could result in an adjudication of delinquency.

"Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone", and further found:

> "The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon Constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness."

The Court further held:

> "The early conception of the juvenile court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition, and in

/which,

> which, in extreme situations benevolent and wise institutions of the state provided guidance and help to save him from a downward career."
>
> "Then, as now, goodwill and compassion were admirably prevalent. But recent studies have, with surprising unanimity, entered sharp dissent as to the validity of this gentle conception. They suggest that the appearance as well as the actuality of fairness, impartiality and orderliness - in short, the essentials of due process - may be a more impressive and more therapeutic attitude so far as the juvenile is concerned." (Emphasis added)

While the right to counsel was there upheld in a proceeding in juvenile court, that proceeding has significant common elements with the instant case. The District Superintendent here has the power to refer the case to the Bureau of Attendance for court action, (G.C. No.16-III-C-5), or to take legal action against a parent or child who refuses to "consent" to confinement of the child, (Education Law §3214(5) (C) or to choose some less stringent course such as continued suspension, which nevertheless deprives the child of his Constitutional and statutory right of an education.

Appellant contends that the presence of an attorney would convert a therapeutic conference in to an "adversary proceeding", to the detriment of the child. But in its zeal to deal with the child's precipitating misconduct "therapeutically", the appellant flagrantly ignores essential questions which must precede the therapeutic session: did the child actually commit the act of misconduct complained of? Is every act of misconduct or disruption which is alleged against a child to be taken as true? Does a past

/record of

record of misbehavior and disruption require a conclusion that the latest alleged misdeed must likewise have been committed? Is every accusing teacher to be deemed incapable of error? Should a child with a past record of misconduct and disruption be disciplined for the alleged precipitating act of misconduct, regardless of whether he committed it? Is the teacher's record of the child's past "misbehavior", which plays such a significant role at the hearing, infallible and beyond challenge? If the answer to any of these questions is No, and fairness and due process require that the answer to all be "no", then it must follow that the hearing should properly contain at least as much of the fact-finding process as is necessary to establish the facts which will provide the basis for the decision. Nor can it be contended that ascertaining the facts concerning the child's alleged misconduct or past record can be harmful to the child. And a spokesman for the parent and child presenting the family's situation and probing the various possibilities for treatment or other disposition, can be of considerable help to the District Superintendent in reaching a satisfactory conclusion.

Neither should the term "adversary proceeding" be regarded as an epithet. Appellant cites the Dixon case, at length, and with apparent approval. Yet that decision insisted that "the rudiments of an adversary proceeding may be preserved" without losing the benefits of a non-judicial hearing, and without cross-examination (Id at p. 159).

/The Gault

The Gault opinion cites the National Crime Commission Report pp. 86-87 which argued vigorously for counsel in juvenile court proceedings. The Commission approach is applicable to this case:

> "Fears have also been expressed that the formality lawyers would bring into juvenile court would bring into juvenile court would defeat the therapeutic aims. But informality has no necessary connection with therapy, and it's not the only possible device. It is quite possible that in many instances lawyers . . . could do more to further therapy for their clients than the small overworked social staffs of the courts." (Emphasis added)

Nor does the presence of an attorney carry with it a correlative requirement that the hearing be conducted as formally as a full trial, with attendant rules of examination and evidence. The Court below agreed to the necessity for latitude in the conduct of the hearing.

Representation at a suspension hearing can help redress the frightening array of school authorities and experts that confronts the parent and child at the hearing. The parent, most likely a mother from the "urban poor" (in this case speaking only Spanish) and her accused child, surely cannot be expected to hold their own - or indeed make some contribution - to a "conference" dominated by the District Superintendent, Principal, Teachers, Guidance Counselor, School Attendance Officer, or some combination of these.

/Nor can it

Nor can it be contended that facts concerning single acts of misconduct are insignificant, and that the totality of the past record of disruption and misbehavior points the need for the District Superintendent's special brand of "therapy". G.C. No.16, on its face, deals with more than a recidivist child. It specifically provides:

> "However, there may be instances when the severity of apupil's action will necessitate his suspension even though there be no previous history of disruptive behavior." (Emphasis added)

Action which is so serious as to "necessitate his suspension" witgout prior disruptive history is certainly serious enough to require a full probing of the facts prior to determination and the imposition of penalty. And if the pupil's conduct is so severe as to lead to Court action, as is surely possible, (e.g. striking a teacher), then the need to probe the facts completely is even more compelling.

This was recognized in an earlier version of the defendant's Circular on School Suspensions, which preceded the current one. General Circular No.11, 1964-1965, dated February 4, 1965, does not distort the nature of the District Superintendent's Suspension proceedings with a euphemism, but designates it as a "hearing".

/The word

The word "hearing" is used throughout; e.g. III-C "Suspension-Assistant Superintendents Hearing. . .(4). The Assistant Superintendent will arrange for a hearing. . ." (Emphasis added) G.C. No.11 also recognizes the existence of factual questions: "The parent and the child should be made aware of the details of the complaint and be given every opportunity to make statements pertaining to it."

Moreover, General Circular No.11 does not prohibit the attendance of attorneys to represent the parent or child.

Amici contend, therefore, that the child's right to a fair hearing cannot be satisfied unless a person trained and skilled in the probing of facts is permitted to protect and speak for the child. Even if many of the children so protected cannot successfully and fairly relent the charge laid against them, those who can are entitled to do so with the necessary counsel.

II. GENERAL CIRCULAR No.16, 1965-1966 DATED APRIL 18, 1966, OF DEFENDANT BOARD OF EDUCATION OF THE CITY OF NEW YORK, INSOFAR AS IT FAILS TO REQUIRE NOTICE TO THE CHILD AND PARENT OF THE CHARGE AGAINST THE CHILD AND AN OPPORTUNITY TO HEAR AND RESPOND TO THE EVIDENCE, VIOLATES THE CHILD'S RIGHTS UNDER THE FOURTEENTH AMENDMENT.

Due process of law requires more than representation by counsel. Notice of the reason for the suspension, and an opportunity to be heard are important ingredients. No provision whatever for notice prior to the hearing to the child or parent

/of the act

of the act of misbehavior which precipitated the suspension. G.C. No.16-III-C-2 sets forth the exact language of the notice of suspension the principal must send.* It does not contain one word concerning the cause of suspension. The District Superintendent must only send "notice of the time and place of such conference to the parent (G.C. No.14-III-C-4), but not notice of the charges. G.C. No.16-III-C-3 requires that the principal send a complete report on the child to the District Superintendent - but not to the parent. These are to be brought to the suspension hearing.

In fact, therefore, the parent and child attend at the hearing without prior notice of the charges or study of the child's record. At such hearing, all the history of all the "facts" are in the possession of the district superintendent, principal, teachers, guidance counselors, etc., who have had ample time to study and discuss them and to formulate reaction. Indeed, in some cases, they reach a decision concerning the child even before the child and parent come before them for the hearing. See Report of Citizen's Committee For Children on School Suspensions, October 20, 1966 p.7. Under such circumstances, the parents and child

/have neither

---

*The notice states: "I regret that it has become necessary to suspend your son (daughter) from attending classes in a public school until further notice. You will be informed by the District Superintendent of the time and place of the conference which will provide an opportunity for a discussion of this matter. During the period of suspension your son (daughter) should be kept at home during school hours."

have neither notice nor hearing. (Indeed, they are not even in a position "to plan educationally for the benefit of the child" as the General Circular purports to arrange. (G.C. No.16-III-C-4)

Not only in the Dixon and Kent cases, supra, but in Matter of Gault, supra, it has been held that due process required adequate notice. Such notice must, according to the U.S. Supreme Court in Gault, "set forth the alleged misconduct with particularity". Notice at the time of hearing is "not timely", the Court held.

This notice is required in civil matters, as well as criminal. In Armstrong v. Manzo, 380 U.S. 545, 550 (1965) the Supreme Court held, in a civil matter, that due process of law required that "deprivation of life, liberty and property by adjudication be preceded by notice and opportunity for hearing appropriate to the case".

In Mullane v. Central Hanover Bank and Trust Company 339 U.S. 306, 313 (1950) the Supreme Court reauired notice "reasonably calculated, under all the circumstances, to appraise interested parties of the pending of the action and afford them an opportunity to present their objectives".

These requirements apply as well to administrative proceedings. Joint Anti-Fascist Refugee Committee v. McGarth 341 U.S. 123 (1951); Wieman v. Updegraff 344 U.S. 183 (1952); Hecht v. Monaghan 307 N.Y. 461, 468 (1954).

/CONCLUSION

CONCLUSION

The judgement of the District Court should be affirmed.

Respectfully Submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BOARD OF EDUCATION OF THE
CITY OF NEW YORK et al,

APPELLANTS

--against--

VICTOR MADERA, RAMIRO MADERA
AND MANUELA MADERA,

APPELLEES

Appeal from the United States District
Court, Southern District of New York

BRIEF FOR AMICI CURIAE

INTEREST OF AMICI

This memorandum is submitted on behalf of the organizations listed below, pursuant to leave to file a brief in this proceeding granted by this court day of May, 1967.

All amici are vitally interested in preserving every child's right to an education, an indispensable need in modern society and without which the ability to rise out of the slum is diminished. As organizations interested in improving educational services for children, or as organizations concerned with the civil rights and civil liberties of all, amici have become acquainted with the procedures and actual practices used in deciding to suspend students from school in New York City, and are convinced these procedures and the lack of educational services which frequently results after suspension of students constitute a violation of every child's right to an education.

Amici learned many children and parents have been adversely affected by the present school suspension system under which more than one child has been unfairly suspended because he was not personally able to present his own side of the story. The right to question the accuracy of those presenting specific complaints about his behaviour has been denied, and no trained adult has been permitted to speak for the child. Despite the educational system's clinging to the theory that the suspension proceedings are part of a continous educational guidance program for the child, amici view the resulting deprivation ,the often substantial loss of time,the perhaps permanent effects as too serious to be permitted without due regard to fair process. It is with this objective that this memorandum is submitted on behalf of the following organizations.

ASPIRA, Inc.
Bedford-Stuyvesant Youth In Action, Inc.
Big Brothers, Inc.
Catholic Interracial Council
Citizens' Committee for Children of New York, Inc.
Congress of Racial Equality, Inc.
EQUAL
Harlem Neighborhoods Association, Inc.
Massive Economic Neighborhood Development, Inc.
National Association for the Advancement of Colored People
New York Civil Liberties Union
New York Urban League
Puerto Rican Association for Community Affairs, Inc.
Puerto Rican Forum
Scholarship, Education and Defense Fund For Racial Equality
United Parents Association

Amici are aware that in dealing with children with records of misbehavior, a guidance orientation is desirable. Amici believe, however, that when suspension procedures are invoked, as in this case, which can result in a deprivation of a most valuable right guaranteed by the constitution and by statute - the right to an education - and can lead to possible loss of liberty, the child is entitled to the requisite elements of due process of law. Amici further believe that to accord the child the protection of due process will not vitiate the guidance to be provided by the school to the child, but will serve the school and the child by helping to teach a just and reasonable disposition in each suspension proceeding.

Statement of the Case

Victor Madera, the minor plaintiff herein, a 14 year old schoolboy in the New York City public school system, was suspended by his principal. Thereafter, his mother (also a plaintiff herein), who does not speak English, received notice from the District Superintendent advising that a conference would be held concerning her son's suspension, and requesting that she bring Victor. When notified by an attorney for plaintiffs that he planned to accompany them to the hearing, the District Superintendent advised him that he could not attend.

Victor's suspension, and the scheduled hearing, were effected pursuant to Board of Education of the City of New York General Circular No.16, entitled "Pupil Suspension" (hereinafter G.C. No.16).

Upon application by plaintiffs - appellants, the United States District Court, Southern District of New York, enjoined the appellants from barring attorneys representing children and parents at suspension hearings. Madera vs. Board of Education - F. Supp. -, Opinion by Hon. Constance B. Motley, USDJ ----1967.

1. DEFENDANT'S PROHIBITION OF ATTORNEYS FROM REPRESENTING PARENTS AND CHILDREN AT ITS DISTRICT SUPERINTENDENT'S SUSPENSION HEARING ("GUIDANCE CONFERENCE") VIOLATES THE FOURTEENTH AMENDMENT OF THE CONSTITUTION AND DEPRIVES PLAINTIFFS OF THEIR LIBERTY AND PROPERTY WITHOUT DUE PROCESS OF LAW.

Free Public Education Is A Constitutional Right

Appellee Victor Madera attends a free public school by virtue of a right granted to him by the New York State Constitution. The New York State Constitution, Article XI, 1, endows him with this right by requiring:

/The legislature

> "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated."

In implementation of this right, the New York Education Law § 3201(1) provides:

> "A person over five and under twenty-one years of age is entitled to attend the public schools maintained in the district or city in which such person resides without the payment of tuition."

Education is more than a right: it is so essential to the child and to his society that it is compulsory. The Education Law (§ 3205(1)) compels the child to attend:

> "In each school district of the state each minor from seven to sixteen years of age shall attend upon full time day instruction."

Moreover, the parent or guardian of a child is required to "cause (the) minor to attend upon instruction." (New York Education Law §3212(2) (b).

The Circumstances & Procedures Under Which A Child May Be Deprived of This Substantial Right

The Education Law defines the kind of child who may be deprived of his right to a free public education, and the Manner in which he may be so deprived. While such a child is today generally described as a "disruptive" child, the statute uses the term "school delinquent".

A "school delinquent" is defined by New York Education Law §3214, as "A minor under seventeen years of age, required by any of the provisions of part one of this article to attend upon instruction, who is an habitual truant from such instruction or is irregular in such attendance ... "He may be required, pursuant to such section, to attend at a "special day school", or "parental school" or school authorities may make agreements for the instruction, confinement and maintenance of school delinquents elsewhere. However, this must be done after notice and hearing. §3214 (5) provides:

/"5. Commitment

> "5. Commitment and parole of a school delinquent. a. Hearing. After reasonable notice to a school delinquent and to the person in parental relation to him and an opportunity for them to be heard, a public school official, as hereinafter provided, may, with the consent in writing of the person in parental relation to the school delinquent, order him to attend a special day school, or to attend upon instruction under confinement at a parental school or elsewhere, as hereinbefore provided, for a period not exceeding two years but in no case after the minor reaches the maximum age of required attendance upon instruction."

Accordingly, §3214 (6) provides for suspension from school:

> "6. Suspension of a minor. a. The school authorities, the superintendent of schools, or district superintendent of schools may suspend the following minors from required attendance upon instruction.
>
> (1) A minor who is insubordinate or disorderly;
>
> (2) A minor whose physical or mental condition endangers the health, safety, or morals of himself or of other minors . . ."
>
> b. Procedure after suspension. In the case of a minor who is suspended as insubordinate or disorderly, immediate steps shall be taken for his commitment as provided in this section, or for his attendance upon instruction elsewhere; in the case of a minor suspended for other cause, the suspension may be revoked whenever it appears to be for the best interest of the school and the minor to do so."
>
> 7. b. The school authorities may institute proceedings before a court having jurisdiction to determine the liability of a person in a parental relation to contribute towards the maintenance of a school delinquent under sixteen years of age ordered to attend upon instruction under confinement . . ."

In addition, the Superintendent of Schools has the power to "exempt" (i.e. expel) a pupil from attendance at public schools. (N.Y. Education Law §3208).

The Board of Education has assigned to the District Superintendent the authority to deal with the child who is found to be so "disruptive" or "maladjusted" that drastic action must be taken: "he must be considered for removal from the school setting". G.C. No.16 (II) The Board states that with respect to suspension, "it is recognized that authoritative steps may be necessary but in general the approach should be therapeutic rather than punitive. G.C. No.16 (II).

/The procedures

The procedures to be used by the District Superintendent are mandated by deft Board of Education in G.C. No.16, which also prescribes the other actions which may be taken against a disruptive child. G.C. No. 16 explicitly prohibits the appearance of an attorney to represent the child or parent.

> "A district superintendent will arrange for a guidance conference to be conducted within 10 school days of the date of his receipt of the principal's notice to the parent. The District Superintendent over his name will send a notice of the time and place of such conference to the parent, school principal and any other appropriate personnel he may wish present. In addition, the Bureau of Attendance will be responsible for notifying the parent to attend the conference. The Bureau will be given at least five school days for this notification. Inasmuch as this is a guidance conference for the purpose of providing an opportunity for the parents, teachers, counselors, supervisors, et al to plan educationally for the benefit of the child, attorneys seeking to represent the parent or the child may not participate."
> (Emphasis added)

This case involves so much of G.C. No.16 as relates to the suspension hearing as scheduled by the District Superintendent for appellees, most especially its prohibition of representation by counsel for the suspended pupil and his parent at such hearing.

While this hearing is described throughout G.C. No.16 as a "guidance conference", that designation is merely a euphemism. The real nature of the hearing is clearly revealed in the possible decisions which the District Superintendent may hand down. At such a suspension hearing the District Superintendent is directed by the Circular to reach a "decision concerning the disposition of the case" within five days. This decision may include:

> 1. "Reinstatement" 2. "Transfer to another school"
>
> 3. "Referral for placement in a school for socially maladjusted children";
>
> 4. "Referral to Bureau of Child Guidance or other suitable agency for study and recommendations, including medical suspension, home instruction, or exemption";
>
> 5. "Referral to the Bureau of Attendance for court action", in which case school personnel will make themselves available for testimony in court." (G.C. No.16 III C-5) (Emphasis added)

/Exemption is

Exemption is defined in footnote 2 to G.C. No.16 as 'withdrawal of a child's right to attend "public school".

Only the first two dispositions continues the attendance of the child at a normal school. All other possibilities result in the continuation of the child's education at a stigmatized school, or continuation of the suspension or infliction of an even harsher penalty. The circular explicitly recognizes that for some suspended students, "school placement or other appropriate disposition is not possible", in which case the District Superintendent "is empowered" to continue the suspension for what amounts to an indefinite period, i.e. "until there is available a resource which will allow for the adequate and required instruction of the suspended pupil". (G.C. No.16 III (6))

> "The District Superintendent's Suspension Hearing can result, inter alia, in a Deprivation of the Child's Constitutional Right to an education, his liberty and his property. Therefore the due process clause of the Fourteenth Amendment is applicable.

On the face of G.C. No.16 alone, it is clear that to call this procedure a "Guidance Conference" (G.C. No.16-III-C) is to employ a misnomer, notwithstanding that the introduction to the Circular seeks to cast this procedure merely as part of the child's educational continuum and nothing more:

> "The suspension procedure must be considered a part of a continuous educational guidance program for the child and his peers. Principals' and district superintendents' guidance conferences, in relation to suspension, provide an opportunity for parents, teachers, counselors, supervisors, et al., to plan educationally for the benefit of the child. For that reason the circular stresses that attorneys seeking to represent the parent or the child at any of these conferences may not participate." (Covering letter of Executive Deputy Superintendent attached to G.C. No.16)

(Para.) Not only on its face, but in fact as well, it is clear that it is precisely because the school system's educational guidance program has failed with respect to the particular shild, and allegedly more drastic action is required, that a suspension hearing is held.

In the contest of a suspension hearing, defendant's use of the words "guidance" and "therapy" is meaningful only if the definitions are

/understood

understood to encompass penalty and punishment. For while it may be argued that suspension, expulsion (or indeed even confinement and imprisonment) provide a certain kind of "guidance" and "therapy", it must also be conceded that in actuality, a substantial penalty is being imposed on the pupil: he is prevented from attending a free public school, a right granted him by the Constitution and by statute. Or he may be consigned to a special school for delinquents.

While urging a "therapeutic approach" Part II of G.C. No. 16 acknowledges clearly:

> "If after all available remedial procedures have been applied a pupil remains disruptive or maladjusted to the extent that he does not profit from instruction or that he prevents other pupils from learning, he must be considered for removal from the school setting."

The Circular goes on to dispose of the therapeutic approach by reference to the "failure" of attempts to help the child.

The nature of this hearing is further revealed by the requirement that prior to it, the principal must send to the District Superintendent "copies of a report on the pupil's acts of misbehavior in chronological order. The statement will also include the time, place and nature of the precipitating cause of suspension . . ." (G.C. No. 16-III-C-3). The principal is also required to bring with him to the suspension hearing, the child's official records of various kinds. (G.C. 16-III-C-3) Moreover, at the hearing, "the parent and child should be helped to understand the seriousness of the problem . . ." (G.C. No. 16-III-C-4) The fact of suspension follows the child through life: if the District Superintendent decides to suspend the pupil, the Circular requires that "Appropriate notation of the suspension will be recorded in the roll book and on the pupil's cumulative record card." G.C. No. 16-III-C-8).

It is therefore, unmistakable from G.C. No.16 that a suspension hearing is held when an act of misbehavior is alleged to have occurred.

/Moreover,

Moreover, the District Superintendent, following such suspension hearing, is empowered to take drastic action which is in the nature of a severe deprivation or penalty, ranging from placement in a school for delinquents or continued suspension, to recommendations for exemption (expulsion). The District Superintendent can also refer the case to the Bureau of Attendance "for court action" leading to possible loss of liberty, in which case "school personnel" (presumably some of the same persons as attended the suspension hearing) must testify in court. G.C. No. 16-III-C-5.

The nature of the court action is apparent from the statute. It compels the "commitment" of the minor. Section 3214 (5) provides that after notice and hearing, a public school official "may, with the consent in writing of the person in parental relation to the school delinquent, order him to attend a special day school, or to attend upon instruction under confinement at a parental school or elsewhere for a period not exceeding two years" (emphasis added).

If the parent is unwilling to "consent" to the "commitment" of the child, i.e., the child's "confinement" and loss of liberty, Section 3214 (5) (C) (1) requires that "such persons shall be proceeded against for violating the provisions of section thirty-two hundred twelve" (dealing with duties of parents respecting school attendance). If the Court finds that the parent did not violate Section 3212 of the Education Law, Section 3214 (5) (C) (2) requires that a "proceeding shall be brought against the minor for violation" of the compulsory attendance requirements.

Attendance at a free public school is a constitutional right. While it is a most precious right for every child, it is especially precious for children who cannot afford private school, and for the children of minority groups. "Even the least-schooled migrant knows the value of education; Pureto Ricians universally would like to see their children well educated, and hope they will be professionals."

/Glazer & Monynihan

Glazer & Moynihan, "Beyond the Melting Pot", MIT Press, 1963, p.127. See also Hutchins Hapgood, "The Spirit of the Ghetto", Shocken Books, 1966 p.28, who wrote of the child of another minority group. "(In the public schools) English becomes his most familiar language. He achieves a growing comprehension and sympathy with the independent, free, rather, skeptical spirit of the American boy . . ." And see Silberman, "Crisis In Black and While", Vintage Books, 1965, p.224-5: "If Negro youngsters are to have a chance, the public schools will have to educate them, for education is rapidly becoming the principal form of capital in the United States."

The child's public school education will directly affect his employment for the remainder of his life. His educational level and resulting employment limitations will dictate where he can afford to live, how he can afford to dress, and almost every other material factor in his life. "In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." Brown v. Board of Education, 347 U.S. 483, 493 (1954).

The decision below refers to the testimony of the Directof of the Bureau of Child Guidance to the effect that most of the children involved in administrative suspension hearings are members of "multi-problem families", an expression the Court took as an synonym for the urban poor. For these children especially, the right to continue their schooling is of such significance that to interfere (by suspension) or to terminate it is a substantial deprivation of property*

Moreover, since the District Superintendent may also refer a case "for court action", it is obvious from the face of General Circular No. 16, that far more onerous penalties can be meted out, including confinement, i.e., deprivation of liberty.

/Accordingly,

Accordingly, the court below was correct in concluding that the due process clause of the Fourteenth Amendment is applicable to a District Superintendent suspending hearings.

General Circular No.16, 1965-1966 dated April 18, 1966, of Defendant Board of Education of the City of New York, Insofar as it Prohibits Representation by Counsel for the Child and Parents at the District Superintendents Suspension Hearing (Guidance Conference) Violates Their Right to Liberty and Property Guaranteed by the Fourteenth Amendment to the United States Constitution.

The procedures mandated by General Circular No.16 violate the due process clause of the Fourteenth Amendment because they do not accord to the child the requisite elements of a fair hearing, notably, the right to be represented by counsel.

A student expelled or suspended from college is entitled to notice and a fair hearing. Dixon v. Alabama State Board of Education, 294 F 2d 150 (5th Circuit 1961) cert den. 368 U.S. 930; Knight v. State Board of Education, 200 F.S. 174 (M.D. Tenn. 1961).

In the Dixon case, a state supported college dismissed six students. The Court of Appeals for the Fifth Circuit enunciated the doctrine that such students were entitled to procedural due process:

> "Whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law. The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved. 294 F. 2d at 155."

The basis for the Dixon decision is the same as that urged herein: the interest of the students to continue their college education was of "extremely great value". The interest of appelle here is even greater: he cannot choose another institution, and he has not yet achieved the minimum necessary education.

The ingredients of a fair hearing may be flexible with respect to individual circumstances, but there can be no dispute whatever that it must include the right to counsel.

/The essential

The essential element of due process was denied appelle herein by virtue of the specific interdiction of appellants.

Even before the recently decided Gault case, the Supreme Court held that representation by counsel was a mandatory element of due process in juvenile offender proceedings to determine whether to waive jurisdiction over a minor and leave him to a criminal proceeding. In Kent v. U.S., 383 U.S. 541 (1966) the Supreme Court held:

> "We do not consider whether, on the merits, Kent should have been transferred; but there is no place in our system of law for reaching a result of such tremendous consequences without ceremony - without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children . . . permitted this procedure. We hold that it does not.' Id. at 554.
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> 'The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice . . . .' Id. at 561.
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> 'We do not mean by this to indicate that the hearing to be held must conform with all of the requirements of a criminal trial even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment.' Id. at562."

Defendant's argument that because this is a "guidance conference", attorney representation is barred has been disposed of most recently by the Supreme Court. Gault v. Arizona, U.S. (1967). In that case the Court disapproved of juvenile proceedings which stripped children of their constitutional rights in the name of "guidance".

The Court made clear that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone", and found:

> "The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon sonstitutional principle has not always produced fair, efficient and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness."

/The Court

The Court further held:

> "The early conception of the juvenile court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition, and in which, in extreme situations, benevolent and wise institutions of the state provided guidance and help 'to save him from a downward career'.
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> Than, as now, goodwill anc eompassion were admirably prevalent. But recent studies have, with surprising unanimity, entered sharp dissent as to the validity of this gentle conception. They suggest that the appearance as well as the actuality of fairness, impartiality and orderliness - in short, the essentials of due process - may be a more impressive and more therapeutic attitude so far as the juvenile is concerned." (Emphasis added)

While the right to counsel was there upheld in a proceeding in juvenile court that proceeding has significant common elements with the instant case: the District Superintendent has the power to refer the case to the Burea of Attendance for court action, (G.C. No.16-III-C-5) to take legal action against a parent or child who refuses to "consent" to confinement of the child, (Education Law §3214 (5) (C)) or he may choose some less stringent course which nevertheless deprives the child of his constitutional and statutory right to an education.

Defendants contend that the presence of an attorney would convert a therapeutic conference in to an adversary proceeding, to the detriment of the child. But in its zeal to deal with the child's precipating misconduct "therapeutically", the defendant flagrantly ignores essential questions which must precede the therapeutic session: did the child actually commit the act of misconduct complained of? Is every act of misconduct or disruption which is alleged against a child to be taken as true? Does a past record of misbehavior and disruption require a conclusion that the latest alleged misdeed must likewise have been committed? Is every accusing teacher to be deemed incapable of error? Should a child with a past record of misconduct and disruption be disciplined for the alleged precipitating act of misconduct, regardless of whether he committed it? Is the teacher's record

/of the child's

of the child's past "misbehavior", which plays such a significant role at the hearing, infallible and beyond challenge? If the answer to any of these questions is no, and fairness and due process require that the answer to all be "no", then it must follow that the hearing should properly contain at least as much of the fact-finding process as is necessary to establish the facts which will provide the basis for the decision.

Appellants fear that the presence of attorneys will convert the hearing into an adversary proceeding to the detriment of the child. But it cannot be contended that ascertaining the facts concerning the child's alleged misconduct or past record can be harmful to the child. And a spokesman for the parent and child presenting the family's situation and probing the various possibilities for treatment or other disposition, can be of considerable help to the District Superintendent in reaching a satisfactory conclusion.

The Gault opinion cites the National

Crime Commission Report pp. 86-87 which argued vigorously for counsel in juvenile court proceedings. Its approach is applicable to this case:

> "Fears have also been expressed that the formality lawyers would bring into juvenile court would defeat the therapeutic aims. But informality has no necessary connection with therapy;it is a device that has been used to approach therapy, and it's not the only possible device. It is quite possible that in many instances lawyers... could do more to further therapy for their clients than the small overworked social staffs of the courts."

Nor does the presence of an attorney carry with it a correlative requirement that the hearing be conducted as formally as a full trial, with attendant rules of examination and evidence. The Court below agreed to the necessity for latitude in the conduct of the hearing.

MOREOVER, representation at a suspension hearing can help redress the frightening array of position and expertise which confronts the parent and child at the hearing. The parent, most likely a mother from the "urban poor" (in this case. speaking only spanish) and her benighted child, surely cannot be expected to hold their own - or indeed make some contribution - to a "conference" dominated by the District Superintendent, Principal, Teachers, Guidance Counselor, School Attendance Officier, and some combination of these.

APPELLANT has contended that facts concerning single acts of misconduct are insignificant, that the totality of the past record of disruption and misbehavior points the need for the District Superintendent's special brand of "therapy". But G.C. No. 16, on its face, deals with more than a recidivist child. It specifically provides:

"However, there may be instances when the severity of of a pupil's action will necessitate his suspension even though there be no previous history of disruptive behavior."

Action which is so serious as to "necessitate his suspension" without prior disruptive history is certainly serious enough to require a full probing of the facts prior to determination and the imposition of penalty. And if the pupil's action is so severe to lead to Court action, as is surely possible (e.g. striking a teacher), then the need to probe the facts completely is even more compelling.

This was recognized in an earlier, but nevertheless recent, version of the defendant's Circular on School Suspensions. General Circular No. 11, 1964-1965, dated February 4, 1965, does not distort the nature of the District Superintendent's Suspension proceedings with a euphemism, but designates it as a "hearing". The word "hearing" is used throughout;.e.g. III-C "Suspension-Assistant Superintendents Hearing...(4) . The Assistant Superintendent will arrange for a hearing...." G.C.No. 11 also recognizes the existence of factual questions: "The parent and the child should be made aware of the details of the compalint and be given every opportunity to make statements pertaining to it".

Moreover, General Circular No. 11 does not prohibit the attendance of attorneys to represent the parent or child.

Amici contend, therefore, that the child's right to a fair hearing cannot be satisfied unless a person trained and skilled in the probing of facts is permitted to protect and speak for the child. Even if many of the children so protected cannot challenge the charge laid against them, those who can are entitled to do so with the necessary counsel.

II. GENERAL CIRCULAR NO. 16, 1965-1966 DATED APRIL 18, 1966 OF DEFENDANT BOARD OF EDUCATION OF THE CITY OF NEW YORK, INSOFAR AS IT FAILS TO REQUIRE NOTICE TO THE CHILD AND PARENT OF THE CHARGE AGAINST HIM AND AN OPPORTUNITY TO HEAR AND RESPOND TO THE EVIDENCE, VIOLATES HIS RIGHTS UNDER THE FOURTEENTH AMENDMENT.

The right to due process of law requires more than representation by counsel. It requires notice of the reason for the suspension, and an opportunity to be heard. Coler Alabama 333US 196 1948. G.C. No. 16 makes no provision whatever for notice prior to the hearing to the child or parent of the act of misbehavior which precipitated the suspension. (G.C. 16III C-2 sets forth the exact language of the notice of suspension the principal must send. It does not contain one word concerning the cause of suspension.) G.C.No 16 III C-3 requires that the principal send a complete report on the child to the district superintendent-- but not to the parent. These are to be brought to the suspension hearing. The district superintendent must send a notice of the "time and place" of the suspension hearing to the parent, principal and others -- but not notice as to the charges.

In fact, therefore, the parent and child attend at the hearing without prior notice of the charges or study of the child's record. At such hearing , all the "facts" are in the possession of the district superintendent, principal, teachers, guidance counselors, etc. who have had ample time to study and discuss them and to formulate reaction. Indeed, in some cases, they reach a decision concerning the child even before the child and parent come before them.for the hearing.

See Report of Citizens's Committee For Children on School Suspensions, October 20, 1966 p. 7. Under such circumstances , the parents and child have neither notice nor hearing. (Indeed, they are not even in a position "to plan educationally for the benefit of the child" as the G.C. purports to arrange. (G.C.No. 16 III C-4)

Not only the Dixon and Kent cases, supra, but holdings in tangential areas as well, require notice and hearing before a civil deprivation or penalty.

In Hecht v. Monaghan, 307 N.Y. 461, 468 (1954), involving the revocation of a hack license, the New York Court of Appeals held:

> "Where the exercise of a statutory power adversely affects property rights - as it does in the present case- the courts have implied the reuirement of notice and hearing, where the statute was silent".

The same Court has revently required the appointment of counsel to indigent mental patients who bring habeus corpus proceedings. People ex rel Rogers v. Stanley, 17 NYS 2d 256.(1966) Due process has been applied to require notice in civil proceedings as well See Armstrong v. Manzo, 380 US 545 (1965), Mullane v. Central Hanover Trust Company, 339 US 306 (1950).

CONCLUSION

The judgement of the District Court should be affirmed.

Respectfully Submitted,

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FIRST DRAFT

DEFENDANTS PROHIBITION OF ATTORNEYS TO
REPRESENT PARENTS AND CHILDREN AT ITS
DISTRICT SUPERINTENDANTS SUSPENSION
HEARING ("GUIDANCE CONFERENCE") VIOLATES
THE FOURTEENTH AMENDMENT OF THE CONSTITUTION AND DEPRIVES PLAINTIFFS OF THEIR
LIBERTY AND PROPERTY WITHOUT DUE PROCESS

Statement as to interest of amici

1. The District Superintendant's Suspension Hearing results, inter alia, in deprivation of the child's liberty and property. Therefore, the due process clause of the Fourteenth Amendment is applicable.

Victor Madera, the minor plaintiff herein, a 14 year old schoolboy in the New York City public school system, was suspended by his principal. Thereafter, his mother (also a plaintiff herein), who does not speak English, received notice from the Dist Supt that a conference would be held concerning her son's suspension, and requesting that she bring Victor. When notified by an attorney for plaintiffs that he planned

if matter a day Judge these
her come the [illegible] refused to
declare him delinquent
school then refer

to accompany them to the hearing, the Dist Supt advised him that he could not attend.

[illegible]

Victor's suspension, and the scheduled hearing, were effected pursuant to Board of Education of the City of New York General Circular No. 16, entitled "Pupil Suspension" (hereinafter G.C. No. 16).

this a heading?

Free public education is a constitutional right. New York Constitution Art XI §1 provides:

> "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."

Pursuant thereto, New York Education Law §3202 (1) provides:

> "A person over five and under twenty-one years of age is entitled to attend the public schools maintained in the district or city in which such person resides without the payment of tuition."

Attendance at school for children over seven years is compulsory. New York Education Law §3205 (1) provides:

> "In each school district of the state each minor from seven to sixteen years of age shall attend upon full time day instruction."

The parent or guardian of a child is required to "cause [the] minor to attend upon instructions". (New York Education Law §3212 (2) (b).

introductory paragraph missing here — a little abrupt

A "school delinquent", is defined by New York Education Law §3214 as "A minor under seventeen years of age, required by any of the provisions of part one of this article to attend upon instruction, who is an habitual truant from such instruction or is irregular in such attendance or insubordinate or disorderly during such attendance . . .". He may be required, pursuant to such section, to attend at a "special day school", or "parental school" or (school authorities may) make agreements for the instruction, confinement and maintenance of school delinquents elsewhere. However, this must be done after notice and hearing.

E.g. — reasonable ~~[illegible]~~ order [illegible] school [illegible] affirmatively [illegible] Bd of Ed. [illegible] a child [illegible] chronically causes serious disruption [illegible] may [illegible] steps taken to maintain order ~~that~~ reasonably [illegible] a factual [illegible] merely [illegible] hearing

§3214 (5) provides:

> "5. Commitment and parole of a school delinquent. a. Hearing. After reasonable notice to a school delinquent and to the person in parental relation to him and an opportunity for them to be heard, a public school official, as hereinafter provided, may, with the consent in writing of the person in parental relation to the school delinquent,

1c

> order him to attend a special day school, or to attend upon instruction under confinement at a parental school or elsewhere, as hereinbefore provided, for a period not exceeding two years but in no case after the minor reaches the maximum age of required attendance upon instruction."

Accordingly, §3214 (6) provides for suspension from school:

> "6. Suspension of a minor. a. The school authorities, the superintendent of schools, or district superintendent of schools may suspend the following minors from required attendance upon instructions
>
> (1) A minor who is insubordinate or disorderly;
>
> (2) A minor whose physical or mental condition endangers the health, safety, or morals of himself or of other minors . . ."
>
> b. Procedure after suspension. In the case of a minor who is suspended as insubordinate or disorderly, immediate steps shall be taken for his commitment as provided in this section, or for his attendance upon instruction elsewhere; in the case of a minor suspended for other cause, the suspension may be revoked whenever it appears to be for the best interest of the school and the minor to do so."
>
> 7. b. The school authorities may institute proceedings before a court having jurisdiction to determine the liability of a person in a parental relation to contribute towards the maintenance of a school delinquent under sixteen years of age ordered to attend upon instruction under confinement. . ."

¶ The Supt of Schools also has the power to "exempt" (i.e. expel) a pupil from attendance at public schools. (N.Y. Education Law § ?).

(The Board of Education has assigned to) The Dist Supt ~~has~~ the ~~power~~ authority to deal with th~~ose~~e child~~ren~~ who ~~are~~ is found ~~by the defendants~~ to be so

1d

"disruptive" or "maladjusted" that drastic action must be taken: "he must be considered for removal from the school setting". G.C. No. 16 (II).

The procedures to be used by the Dist Supt are mandated by deft Bd of Ed in G.C. No. 16, which also prescribes the other actions which may be taken against a disruptive child. G.C. explicitly prohibits the appearance of an attorney to represent the child or parent.

> "A dist supt will arrange for a guidance conference to be conducted within 10 school days of the date of his receipt of the principal's notice to the parent. The Dist Supt over his name will send a notice of the time and place of such conference to the parent, school principal and any other appropriate personnel he may wish present. In addition, the Bureau of Attendance will be responsible for notifying the parent to attend the conference. The Bureau will be given at least five school days for this notification. Inasmuch as this is a guidance conference for the purpose of providing an opportunity for parents, teachers, counselors, supervisors, et al to plan educationally for the benefit of the child, attorneys seeking to represent the parent or the child may not participate." (Emphasis added)

This case involves so much of G.C. 16 as relates to the suspension hearing as scheduled by the Dist Supt. for plaintiffs, and its prohibition of representation by counsel for the suspended pupil and his parent at such hearing.

While this hearing is described throughout G.C. 16 as a "guidance conference", that designation is ~~really~~ merely a euphemism. The real nature of the hearing is clearly revealed in the possible decisions which the Dist Supt may hand down. At such a suspension hearing the Dist Supt is directed by the Circular to reach a "decision concerning the disposition of the case" within five days.

This decision may include:

1. Reinstatement ~~or~~ 2. transfer to another school

3. Referral for placement in school for socially maladjusted children

4. Referral to Bureau of Child Guidance or other suitable agency for study and recommendations, including medical suspension, home instruction, or exemption

5. Referral to the Bureau of Attendance for court action, in which case school personnel will make themselves available for testimony in court.

(G.C. 16-C-5)

Only the first two dispositions continues the attendance of the child at a normal school. All other possibilities result in the continuation of the child's education at a stigmatized school, or continuation of the suspension or inflict~~s~~ion of an even harsher penalty. The Circular explicitly recognizes that for some suspended students, "school placement or other appropriate disposition is not possible", in which case the district supt "is empowered" to continue the suspension for what amounts to an indefinite period, i.e. "until there is available a resource which will allow for the adequate and required instruction of the suspended pupil". (G.C. 16-III-C-6)

On the face of G.C. No. 16 alone, it is clear that to call this procedure a "Guidance Conference" (G.C. No. 16-III-C) is to employ ~~resort~~ ~~to~~ a misnomer ~~euphemism~~, notwithstanding that the introduction to the Circular seeks to cast this procedure merely as part of the child's educational continuum and nothing more,:

> ¶ "The suspension procedure must be considered a part of a continuous educational guidance program for the child and his peers. Principals' and district superintendents' guidance conferences, in relation to suspension, provide an opportunity for parents, teachers, counselors, supervisors, et al., to plan educationally for the benefit of the child. For that reason the circular stresses that attorneys seeking to represent the parent or the child at any of these conferences may not participate." (Covering letter of Executive Deputy Supt attached to G.C. 16)

~~But~~ Not only on its face, ~~as well as~~ but in fact (as well) it is clear that it is precisely because the school system's educational guidance program has failed with respect to the particular child, and more drastic action is required, that a suspension hearing is held.

Defendant's use of the words "guidance" and "therapy" is meaningful only if the ~~words~~ definitions are understood to encompass penalty and punishment. For while it may be argued that suspension, expulsion (or indeed even confinement and imprisonment) provide a certain kind of "guidance" and "therapy", it must also be conceded that in actuality, a substantial penalty is being imposed on the pupil: he is prevented from attending a free public school, or may be consigned to a special school for delinquents. A substantial statutory benefit is thus being denied the student

is this the place to pose these

that hearings are based on factual assumptions which may not be true

4a

While urging a "therapeutic approach" Part II of G.C. 16 acknowledges clearly:

> "If after all available remedial procedures have been applied a pupil remains disruptive or maladjusted to the extent that he does not profit from instuction or that he prevents other pupils from learning, he must be considered for removal from the school setting."

~~G.C. 16 Part II~~

The Circular goes on to dispose of the therapeutic approach by reference to the "failure" of attempts to help the child.

The nature of this hearing is further revealed by the requirement that prior to it, ~~Prior to the suspension hearing~~, the principal must send to the dist supt "copies of a report on the pupil's acts of misbehavior in chronological order. The statement will also include the time, place and nature of the precipitating cause of suspension . . ." (G.C. 16 III C-3)

The principal is also required to bring with him to the suspension hearing, the child's official records of various kinds. (G.C. 16-III-C-3). Moreover at the hearing, "the parent and child should be helped to understand the seriousness of the problem . . ." (G.C. 16-III-C-4). The fact of suspension follows the child through life: if the dist supt decides to suspend the pupil, the Circular ~~G.C. 16~~ requires that "Appropriate notation of the suspension will be recorded in the roll book and on the pupil's cumulative record card." G.C. (No 16) III C-8

It is therefore, unmistakable from G.C. 16 that a suspension hearing is held when a serious act of misbehavior is alleged to have occurred. Moreover, the Dist supt, following such suspension hearing, is empowered to take drastic action which is in the nature of a severe deprivation or penalty, ranging from placement in a school for delinquents ~~[illegible]~~ or continued suspension, to recommendations for exemption (expulsion). The dist supt can also refer the case to the Bureau of Attendance "for court action", (leading to possible loss of liberty) in which case "school personnel" (presumably some of the same persons as attended the suspension hearing) must testify in court. G.C. 16 III C-5.

heading

Attendance at a free public school is a right. While it is a precious right for every child, it is especially precious for children who cannot afford private school, and for the children of ~~ethnic~~ minority groups. "Even the least-schooled migrant knows the value of education; Puerto Ricans universally would like to see their children well educated, and hope they will be professionals." Glazer & Moynihan, "Beyond the Melting Pot", MIT Press, 1963, p. 127. See also Hutchins Hapgood, "The Spirit of the Ghetto", Shocken Books, 1966 p. 28; who wrote of the children of another minority group: "[In the public schools] English becomes his most familiar language. He achieves a growing comprehension and sympathy with the independent, free, rather skeptical spirit of the American boy . . ."

The child's public school education will directly affect his ability to find employment and to improve his employment for the memainder of his life. His educational level and resulting employemnt limitations will ~~affect~~ dictate where he can afford to live, how he can afford to dress, and almost every other material factor in his life. "In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

The decision below refers to the testimony of the Director of the Bureau of Child Guiadance of to the effect that most of the children involved in administrative

Should we have a footnote here

suspension hearings are members of "multi-problem families", an expression the Court took as an Synonym expression for the urban poor. For these children especially, the right to continue their schooling is of such significance that to interfere (by suspension) or to terminate it is a substantial deprivation of property.

Moreover, since the District Superintendent may also refer a case "for court action", it is obvious from the face of General Circular No. 16, that far more onerous penalties can be meted out, including confinement; i.e., deprivation of liberty.

Accordingly, the court below was correct in concluding that the due process clause of the Fourteenth Amendment is applicable to a District Superintendent suspending hearings.

I

Even before the recently decided Gault case, the Supreme Court held that representation by counsel was mandatory element of due process in juvenile offender proceedings to determine whether to waive jurisdiction over a minor and leave him to a criminal proceeding. In Kent v. U.S., 383 U.S. 541 (1966) the Supreme Court held:

> "'We do not consider whether, on the merits, Kent should have been transferred; but there is no place in our system of law for reaching a result of such tremendous consequences without ceremony--without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children . . . permitted this procedure. We hold that it does not.' Id. at 554.
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2. General Circular No. 16, 1965-1966 dated April 18, 1966, of defendant Board of Education of the City of New York, insofar as it prohibits representation by counsel for the child and parents at the District Superintendents Suspension Hearing (Guidance Conference) violates their right to liberty and property guaranteed by the Fourteenth Amendment to the United States Constitution.

POINT II.

The procedures mandated by General Circular 16 violate the due process clause of the Fourteenth Amendment because they do not accord to the child the requisite elements of a notice ~~and~~ fair hearing.

A student expelled or suspended from college is entitled to notice and a fair hearing. Dixon v. Alabama State Board of Education, 294 F 2d 150 (5th Circuit 1961) cert. den. 368 U.S. 930; Knight v. State Bd. of Education, 200 F.S. 174 (M.D. Tenn. 1961).

9a

In the Dixon case, a state supported college dismissed six students. The Court of Appeals for the Fifth Circuit enunciated the doctrine that such students were entitled to procedural due process:

> "'Whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law. The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved.' 294 F. 2d at 155."

The basis for the Dixon decision is the same as that urged herein: the interest of the students to continue their college education was of "extremely great value."

The ingredients of a fair hearing may be flexible with respect to individual circumstances, but there can be no dispute whatever that it must include the right to counsel.

That essential element of due process was denied ~~most egregiously lacking in~~ plaintiff herein ~~this case of~~ by virtue of the specific interdiction of defts ~~-- is~~

> "The early conception of the juvenile court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition, and in which, in extreme situations, benevolent and wise institutions of the state provided guidance and help 'to save him from a downward career.'
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While the right to counsel was there upheld in a proceeding in juvenile court, that proceeding has a significant common element, with the instant case: the dist supt has the power to refer the case to the Bureau of Attendance for court action, G.C. 16 III C-5, a decision which can readily result in the confinement of the child, or he may choose some less stringent course which imposes a substantial deprivation or penalty on the child. Defendants contend that the presence of an attorney would convert a therapeutic conference in to an adversary proceeding, to the detriment of the child. But in its zeal to deal with the child's precipitating

Good!

misconduct "therapeutically", the defendant flagrantly ignores essential ~~pre-therapeutic~~ questions (which must precede the therapeutic session): did the child actually commit the act of misconduct complained of ~~or may be mistakenly accused~~? If ~~so~~ he did, were there any mitigating circumstances ? Is every act of misconduct or disruption which is alleged against a child to be taken as true ? Does a past record of misbehavior and disruption require a conclusion that the latest alleged misdeed must likewise have been committed? Is every accusing teacher to be deemed incapable of error? Should a child with a past record of misconduct and disruption be disciplined regardless of whether he committed the precipitating act ? Is the teacher's record of the child's past "misbehavior", which plays such a significant role at the hearing, infallible and beyond challenge ? If the answer to any of these questions is no, and (fairness and) due process requires that the answer to all be "no", then it must follow that the hearing should properly contain at least as much of the "adversary" process as is necessary to establish the facts which will provide the basis for the decision.

While, defendant may argue that the totality of the past record of disruption and misbehavior points the need for the Dist Supt's special brand of "therapy" and each individual act is insignificant, G.C. No 16, on its face, deals with more than the a recidivist child. It specifically provides:

> "Each principal and teacher has a responsibility to identify pupils in need of help and to enlist the aid of the Board of Education's pupil personnel services as well as the resources available in the community. In addition, the principal should have available an adequate record indicating that the pupil recognized to be in need of extra support and that attempts were made with parents to help the child. The success or failure of these attempts and other pertinent data should be an essential part of the record. However, there may be instances when the severity of a pupil's action will necessitate his suspension even though there be no previous history of disruptive behavior." (emphasis added)

Action which is so serious as to "necessitate his suspension" without a prior disruptive history is certainly serious enough to require a full probing of the facts prior to determination and the imposition of penalty. And if the pupil's action is so severe to lead to Court action, as is surely possible (e.g. striking a teacher), then the need to probe the facts competently is even more compelling.

moreover, representation at such a hearing can help redress the frightening array of position & expertise which confronts the parent & child at the hearing. The parent, most likely a mother from the "urban poor" (in this case, -speaking only Spanish) and her benighted child, surely cannot be expected to hold their own – or indeed make some ~~a~~ contribution – to a "conference" dominated by the Dist Supt, Principal, Teachers, Guidance Counselor, School Attendance Officer, or some combination of these

This was recongized in an earlier, but nevertheless recent, version of the defendant's Circular on School Suspensions. Geneal Circular No. 11, 1965-65, dated February 4, 1965, does not distort the nature of the District Superintendent's Suspension proceedings with a euphemism, but designates it as a "hearing." The word "hearing" is used throughout;.e.g. III-C "Suspension--Assistant Superintendents Hearing...(4) (emphasis added) The Assistant Superintendent will arrange for a hearing..." G.C. No. 11 also recognizes the existence of factual questions: "The parent and the child should be made aware of the details of the complaint and be given every opportunity to make statements pertaining to it."

Moreover, General Circular No. 11 does not prohibit the attendance of attorneys to represent the parents or child.

Amici contend, therefore, that the child's right to a fair hearing cannot be satisfied unless a person trained and skilled in the probing of facts is permitted to protect the child. Even if many of the children so protected cannot challenge the charge laid against them, those who can are entitled to do so with the necessary counsel professional help.

3. General Circular No. 16, 1965-1966 dated April 18, 1966 of defendant Board of Education of the City of New York, insofar as it fails to require notice to the child and parent of the charge against him and an opportunity to hear and respond to the evidence, violates his rights under the Fourteenth Amendment.

The right to due process of law requires more than representation by counsel. It requires notice of the charges, and an opportunity to be heard. (~~Cite Dorsen~~ citation to case from [illegible] p. 12, page 12). No G.C. 16 makes no provision whatever for notice prior to the hearing to the child or parent of the act of misbehavior which precipitated the suspension. (G.C. 16 III C-2 sets forth the exact language of the notice of suspension the principal must send. It does not state the cause of suspension.) G.C. 16 III C-3 requires that the principal send a complete report on the child to the dist supt --

but not to the parent. These are to be brought to the suspension hearing. The dist supt must send a notice of the "time and place" of the suspension hearing to the parent, principal and others -- but not notice as to the charges.

In fact, therefore, the parent and child attend at the hearing without prior notice of the charges or study of the child's record. At such hearing, all the "facts" are in the possession of the dist supt, principal, teacher, guidance counselors, etc. who have had ample time to study them and formulate a reaction. Under such circumstances, the parents and child have neither notice nor hearing. (Indeed, they are not even in a position "to plan educationally for the benefit of the child" as the G.C. purports to arrange. (G.C. 16 III C-4)

Not only the Dixon and Kent cases, supra, but holdings in tangential areas as well, require notice and hearing before a civil deprivation or penalty. In Hecht v. Monaghan, 307 N.Y. 461, 468 (1954), involving the revocation of a hack license, the New York Court of Appeals held:

> "Where the exercise of a statutory power adversely affects property rights--as it does in the present case-- the courts have implied the requirement of notice and hearing, where the statute was silent."

The same Court has recently required the appointment of counsel to indigent mental patients who bring habeus corpus proceedings. People ex rel Rogers v. Stanley, 17 NYS 2d 256. (1966).

Carl - feel free to change - and please make sure thi
conforms to proper style

May 24, 1967

MEMORANDUM OF

There may be more here

ASPIRA, Inc.
Bedford-Stuyvesant Youth In Action, Inc.
Big Brothers, Inc.
Citizens' Committee for Children of New York, Inc.
Congress of Racial Equality, Inc.
EQUAL
Harlem Neighborhoods Association, Inc.
Massive Economic Neighborhood Development, Inc.
National Association for the Advancement of Colored People
New York Civil Liberties Union
New York Urban League
Puerto Rican Association for Community Affairs, Inc.
Puerto Rican Forum
United Parents Association

S'EDFRE

This Goes

Amici Curiae

INTEREST OF AMICI

This memorandum is submitted on behalf of the above named organizations pursuant to leave to file a brief in this proceeding granted by this court ~~on the~~ ___st day ~~of May, 1967~~.

~~As set forth in the application for leave to file a brief, these~~ All ~~The~~ amici ___ ~~civic groups~~ are vitally interested in preserving every child's right to an education, an indispensable need in modern society and without which the ability to rise out of the slum is diminished. As organizations interested in improving educational services for children, or as organizations concerned with the civil rights and civil liberties of all, amici have become acquainted with the procedures and actual practices used in deciding to suspend students from school in New York City, and are convinced these procedures and the lack of educational services ~~for suspended~~ which frequently results after the suspension of students constitute a violation of every child's right to an education.

Amici have ~~been in contact with~~ learned ~~[illegible]~~ that many children and parents ~~who~~ have been adversely affected by the present school suspension system under which more than one child has been unfairly suspended because he was not personally able to present his own side of the story, ~~or~~ The right to question the ~~truthfulness~~ accuracy of those presenting specific complaints about his behavior, has been denied, and no ~~lawyer was~~ trained adult has been permitted to speak for the child. Despite the educational system's ~~adherence~~ ~~to~~ clinging to the theory that the suspension proceedings are part of a continuous educational guidance program for the child, amici view the ~~potential~~ resulting deprivation, in the often substantial loss of time, the perhaps permanent effects ~~of the child's right to an education~~ as too serious to be permitted without due regard to fair process. It is with this objective that this memorandum is submitted on behalf of the following organizations:

Colh

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VICTOR MADERA, RAMIRO MADERA and MANUELA MADERA,

Plaintiffs,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

67 CIV. 635

APPEARANCES:

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New York, New York 10007

Attorneys for Defendants

CONSTANCE BAKER MOTLEY, D. J.

Findings of Fact and Conclusions of Law

The minor plaintiff, Victor Madera, is a 14-year old pupil enrolled in PublicSchool 22, a junior high school in the

New York City public school system. On February 2, 1967, Victor was suspended from school by the principal. He has been out of school since that date.

After Victor was suspended, the principal of his school notified the District Superintendent of District No. 1, Miss Theresa Rakow, a defendant in this suit. [1/] Miss Rakow notified Victor's parents, the adult plaintiffs, that a conference would be held in her office on February 17, 1967 with regard to Victor's suspension. The notice advised: 1) there would be a Spanish speaking person at this conference to translate "for all of us," and 2) a friend could be brought to assist the parents in this translation. The notice stated: "You are hereby advised that you are to be present at this conference. Please bring (Victor) with you..." The letter was in both English and Spanish. Victor's mother speaks Spanish; she does not speak or understand English. The principal's actions and Miss Rakow's actions were taken pursuant to General Circular No. 16, (1965-1966). [2/] This circular embodies the rules and regulations promulgated by the other defendants, the Board of Education of the City of New York and the Superintendent of Schools, with regard to pupil suspensions.

After Victor's parents received the notice, they secured an attorney who contacted Miss Rakow's office to notify her that the attorney would appear at the February 17 hearing. [3/] The attorney was advised that he could not attend the hearing.

Circular No. 16 provides as follows:

> "Inasmuch as this is a guidance conference for the purpose of providing an opportunity for parents, teachers, counselors, supervisors, et al., to plan educationally for the benefit of the child, attorneys seeking to represent the parent or child may not participate." (Circular No. 16, p. 5).

On February 16, 1967, at 8:15 P.M., after notice to defendants and oral argument, this court issued a temporary restraining order restraining defendants as follows:

> "From holding any proceedings at which the rights of any of the plaintiffs may be affected and, particularly, from conducting the 'Assistant Superintendent's Hearing' scheduled for February 17, 1967, without permitting plaintiffs' legal counsel to be present and to perform his tasks as an attorney."

The incident which precipitated Victor's suspension on February 2 resulted in the filing of a charge of juvenile delinquency against him on February 8 by a teacher, an employee of defendant Board of Education, in the Family Court. New York Family Court Act, §§712, 733.[4/]

The same attorneys representing plaintiffs here also were retained to represent Victor in the Family Court. The New York Family Court Act, §728, gives Victor the right to counsel in a juvenile delinquency proceeding. On February 28, the claim that Victor was a juvenile delinquent was dismissed by the Family Court. There "was a substitution and a finding that has not been completed, a fact-finding that (Victor) is a young person in need of supervision."[5/]

Defendants did not proceed with the February 17 hearing under the conditions permitted by the temporary restraining order. The order also required counsel for both sides to appear in court on February 21, at which time reargument would be heard on the temporary restraining order and plaintiffs' application for a three-judge court.

On February 21, defendants requested and were granted a continuance on the ground that all defendants had not been served. Defendants agreed to a continuance of the temporary restraining order until March 1 at which time, if a three-judge court was not required, the court would proceed to hear plaintiffs' motion for preliminary injunction.

On February 24, plaintiffs filed an amended complaint and motion for preliminary injunction. The original complaint predicated jurisdiction wholly upon Title 28, United States Code,

§1331. Declaratory relief,[6] interlocutory and permanent injunctive relief was sought. The original complaint prayed for the convening of a special three-judge district court to hear and determine this action. Title 28, U. S. C., §§2281, 2284. The amended complaint also prayed for the convening of a three-judge court but invoked an additional jurisdictional base for this cause, i.e., Title 28, U. S. C., §1343. The amended complaint relied upon the provisions of Title 42, U. S. C., §1981 and 1983 as the federal statutes giving rise to this cause of action.

On March 1, 1966, this court ruled that this cause is not properly a cause of action requiring a statutory three-judge court. Under constitutional attack here is a provision of a circular issued by a local school board, not the constitutionality of any state statute.[7] The "no attorneys provision" is not mandated by any state law. However, the circular is promulgated pursuant to authority granted by a state statute. New York Education Law, §2554 (13) (b). Nevertheless, the attack upon the circular does not present the type of constitutional challenge to state action that would require the convening of a three-judge court. The guiding principle for three-judge court cases was laid down by the Supreme Court in Phillips v. United States, 312 U.S. 246 (1941) as follows:

> "To bring this procedural device into play--to dislocate the normal operations of the system of lower federal courts and thereafter to come directly to this court--requires a suit which seeks to interpose the Constitution against enforcement of a state policy, whether such policy is defined in a state constitution or in an ordinary statute or through the delegated legislation of an 'administrative board or commission'. The crux of the business is procedural protection against an improvident state-wide doom by a federal court of a state's legislative policy." (at 251).

Consequently, where that which is under attack is not mandated by state law but is only a regulation of a local school board, adopted on its own volition, and is not of state-wide application, although authorized by state law, the controversy may be properly adjudicated by a single judge court. Griffin v. County School of Prince Edward County, Va., 377 U.S. 218 (1964); Sweeney, et al., v. State Board of Public Assistance, 26 F. Supp. 171 (M.D. Pa. 1940), aff'd 119 F.2d 1023.

When the hearing on plaintiffs' motion for preliminary injunction commenced on March 1, defendants moved to dismiss the case as moot on the ground that the Family Court proceeding had already taken place. One of plaintiffs' claims on their application for a temporary restraining order was that counsel should be permitted at the February 17 Guidance Conference because the facts adduced from Victor there could be used against him in the subsequently scheduled Family Court hearing on the juvenile delinquency charge where Victor's personal liberty would be in jeopardy. Family Court Act, §744.[8] Plaintiffs also claimed that the February 17 Guidance Conference might result in forcing adult plaintiffs to choose between signing a "consent", required by law, which would enable the school authorities to make whatever school or other institutional placement they deemed desirable for Victor, or face neglect charges in Family Court for failure to sign the "consent". New York Education Law, §§3205,[9] 3212-1, 2b,[10] 3214;[11] New York Family Court Act, §§312,[12] 332,[13] 335,[14] 337.[15]

Plaintiffs' consitutional contentions with respect to the foregoing claims are: 1) the "no attorneys provision" of Circular No. 16 deprives them of protection for their right against self incrimination, right to counsel and right to due process guaranteed by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, since any statements made by them in, or as a part of, the Guidance Conference may be used against them in subsequent Family Court proceedings, where

Victor's personal liberty will be in jeopardy and 2) the minor plaintiff's right not to testify against himself must be preserved because one of the consequences of a Guidance Conference may also be loss of personal liberty. Circular No. 16, p. 5.

As indicated above, the Family Court proceeding against Victor had not been completed on March 1. Moreover, it was clear to this court that plaintiffs' claims in this action were not limited to the foregoing described claims. In addition, plaintiffs claim that as a result of a Guidance Conference, Victor may be suspended from school for an indefinite period of time, placed in a school for socially maladjusted children (formerly known as "600" schools), involuntarily incarecerated in an institution, or referred to the Family Court for appropriate action. (Amended Complaint, para. 15).

Plaintiff's constitutional contention with respect to these claims are that since the above enumerated irreparable consequences can flow from a Guidance Conference, the "no attorneys provision" of Circular No. 16 may result in Victor being denied his right to attend the public schools granted him by the Constitution and Education Law of the State of New York, without due process of law guaranteed by the Fourteenth Amendment.[16/]

After considering the gravity of plaintiffs' constitutional claims, and the fact that the Family Court proceeding had not been concluded, this court ruled on the March 1 hearing that plaintiffs' case is not moot.

Defendants' counsel then moved to dismiss on the ground that plaintiffs had abandoned their attack on the constitutionality of certain provisions of the New York Education Law and were now proceeding under the Civil Rights Law which plaintiffs had not previously invoked. Defendants' counsel was mistaken in this belief. Plaintiffs in amending their complaint rely on a Federal Civil Rights Statute, i.e., Title 42, U. S. C., §1983.[17/] This statute gives plaintiffs the right to bring this action for injunction to enjoin defendants who, plaintiffs claim, acting under color of state law, are unconstitutionally enforcing the "no attorneys provision" of Circular No. 16 against plaintiffs. Such state action, plaintiffs maintain, violates their rights guaranteed by the Fifth, Sixth and Fourtheenth Amendments to the Constitution of the United States. This court has jurisdiction of such an action. Monroe v. Pape, 365 U. S. 167 (1961); Taylor v. Board of Education of City of New Rochelle, 294 F.2d 36 (2d Cir. 1961) cert. denied, 368 U.S. 940; Title 28, U.S.C., §1343(3).[18/]

Defendants have questioned the propriety of a federal court determining the issues raised in this case on the ground that this is a matter preferably handled by the state. However appropriate such considerations of state as opposed to federal relief may be in some cases, it does not appear that this is a proper case case for the court to refrain from acting. It is now a well settled tled principle that relief under the Federal Civil Rights Acts may not be defeated because relief was not first sought under state law which provided a remedy. Monroe v. Pape, supra. The whole purpose of the Federal Civil Rights Acts would be seriously undermined if a federal claim in a federal court must await an attempt to vindicate the very same claim in a state court. McNeese v. Board of Education, 373 U.S. 668 (1963). Where the terms of the state (local school board) provision under attack are clear, there is no basis for abstention to require plaintiffs to exhaust either state administrative or judicial remedies. Rivers v. Royster, 360 F.2d 592 (4th Cir. 1966). As another federal court said in a school case involving suspensions and expulsions, Woods v. Wright, 334 F2d 369 (5th Cir. 1964) at 374-375:

> "We are fully aware of the reluctance with which the Federal Courts should contemplate the use of the injunctive power to interfere with the conduct of state officers. But when there is a deprivation of a constitutionally guaranteed right the duty to exercise the power cannot be avoided."

Upon the hearing of plaintiffs' motion for preliminary injunction and upon the trial, which were consolidated, the following facts were established in addition to those set forth above[19/]:

There are 1,084,818 pupils in the New York City public school system, 20.9% of whom are Puerto Rican, 29.3% are Negro, and 49.8% are white.

School District No. 1 is located in Manhattan, one of the five boroughs (counties) which comprise the City of New York. The District boundaries, generally speaking, are from Grand Street north to 21st and 23rd Streets and from the Bowery and Fourth Avenue to the East River. The area thus described is commonly referred to as the Lower East Side. It is a racially mixed area but predominantly Puerto Rican. It is a community of low income families in the main. There are 28,000 pupils in the District in a total of twenty-three schools. There are 14 elementary schools, 4 junior high schools, 2 special schools for socially maladjusted children, and 3 high schools in District No. 1.

District Superintendent Rakow, in addition to having responsibility for the supervision of the educational program of the District, conducts hearings relating to the suspension of students, as required by New York Education Law, §3214. Miss Rakow and the other school authorities choose to refer to these hearings as "Guidance Conferences". These conferences are conducted in cases where a student has been suspended by the principal. Once a principal has suspended a child and so notified the parents and Miss Rakow, it is Miss Rakow's duty to hold a "Guidance Conference" "to determine", to use her words, "what next educational step may be taken to help the child." There are two kinds of principal's suspensions. There is what is called a "principal suspense which means that the principal merely suspends the child from school service until such a time as he personally can confer with the parent and try to make the adjustment directly in the school." In such a case, the principal is limited to keeping the child from school for no more than five days. The principal generally meets with a parent before a suspension to try to adjust the problem. However, if there is some emergency where there is not time to meet with the parent, a principal might suspend immediately. After a principal's conference with the parent, the child is returned to school. A child does not normally go to the District Superintendent's office immediately after the principal's suspension as was the case with Victor. If after the pupil has returned to school there continues to be a problem which the principal feels he cannot handle, then the principal can suspend the pupil and refer that suspension to the District Superintendent. There is no evidence that Victor had been thus previously suspended by the principal.

When a suspended pupil is referred to the District Superintendent this is known as an "administrative suspense." There is no hearing held by the principal before an "administrative suspense" takes place. When the District Superintendent receives a copy of a letter from the principal to the parents stating that the child has been suspended, the District Superintendent notifies the parent of the date of hearing. The principal's letter advises the parents that they will be so notified.

When a conference is held in the District Superintendent's office, she invites the principal of the suspended child's school and the guidance counselor of that school. The members of the District Superintendent's staff who attend are: her assistant, the guidance counselor assigned to her office, and the school-court coordinator assigned to the district. The Bureau of Attendance, an arm of the Board of Education, which enforces the state's compulsory school attendance law is also notified of the conference.

The function of the school-court coordinator is to provide liaison between the Family Court and the schools. The school court coordinator interprets to the court "the program and facilities" of the school; "he conversely interprets to the school the decisions of the court and the recommendations of the court;" the school-court coordinator "acts as a sort of clearing house, so that all agencies may work together..." the school-court coordinator also, at the request of the court, gives to it the decision made by the District Superintendent at the Guidance Conference. The court may make use of the District Superintendent's decision at the dispositional hearing. New York Family Court Act, §§345, 346. The school-court coordinator also takes notes at the conference.

The guidance counselor on the District Superintendent's staff has the responsibility for "following up on children who have been suspended, to make sure that they are adjusting properly, to make sure that recommendations are carried out." (Emphasis added). The guidance counselor works with the Bureau of Child Guidance, (BCG) "so that if [the District Superintendent] has asked for a study and recommendation for a child", she can work with the BCG "to expedite the receiving of that study as soon as possible." The guidance counselor also takes notes at the Guidance Conferences and keeps all records. When children return from suspension, the guidance counselor helps to placethem in the best possible school situation.

The suspended child may have a representative from any social agency, to whom the family may be known, to attend a suspension hearing in the District Superintendent's office.

At the conference, all school personnel present sit around a table in Miss Rakow's office and discuss the child's anecdotal record, supplied by the principal, and the child's problems. Usually the parents and the child wait outside until a decision is reached. The parents and child are then brought in and asked if they have anything to say as to what should be done with the child. If the child is old enough, he is asked to express an opinion. If a representative of a social agency is present, he or she contributes to the discussion. The decision is then given to the child and his parents.

The decisions which the District Superintendent may reach are the following:

1. The suspended child might be reinstated in the same school.

2. The suspended child might be transferred to another school of the same level, e.g., a junior high school child to another junior high school.

3. The suspended child might be transferred to a special school for socially maladjusted children; there are two in District No. 1.

4. The District Superintendent may refer the student's case to the Bureau of Child Guidance (BCG) or other social agency for study and recommendations, including medical suspension, home instruction, or exemption.

5. The District Superintendent may refer the case to the Bureau of Attendance for court action.

The BCG is the clinical arm of the Board of Education. Its employees are social workers, psychologists and psychiatrists. When the District Superintendent refers a child to the BCG, it makes a study of the child "as seems indicated to help" the District Superintendent or to advise her "of what may be best educational placement."

The BCG may make one of the following recommendations:

1. The child is able to attend school but should be sent to a school with a particular kind of program.

2. The child should be sent to a special day school for socially maladjusted pupils or a residential institution where defendant Board of Education operates such a school.

3. The child should be instructed at home.

4. The child should be temporarily exempted from school while his parents seek institutional help.

5. The child should receive a medical suspension or exemption.

6. The child should be exempt from school.

If the child has not been attending school or has been attending irregularly, the child may be referred by the District Superintendent to the Bureau of Attendance. If the compulsory school attendance law is not being obeyed, it is the responsibility of the Bureau of Attendance to take the matter to the Family Court where the pupil may then be sent to an institution.

In administrative suspense matters it is the general practice of the District Superintendent's office to notify the Bureau of Attendance of a Guidance Conference. The Bureau sends an attendance teacher to the home of the child to notify the parents of the suspense conference and request their appearance at the arranged time.

When, after a Guidance Conference, the District Superintendent decides that a child should be in a special day school for socially maladjusted children, the parents are notified by letter to report to the school with the child. In other words, the cooperation and consent of the parents is thus sought in placing a child in a special day school for socially maladjusted pupils. If the child and his parents do not report for admission and attendance, the principal of the special school notifies the Bureau of Attendance. The Bureau of Attendance then petitions the Family Court to take appropriate action. The defendant Board of Education maintains and operates 17 such special day schools throughout New York City.[20/]

When there is a decision by the BCG and the District Superintendent that a student should receive his schooling in a residential institution where the defendant Board of Education operates a special school for socially maladjusted children, again parental consent is first sought. The guidance counselor in the District Superintendent's office contacts the parents and advises them that in the opinion of any other interested social agency that happens to be involved, this child should be institutionalized for an extended period of time.

If the parents "voluntarily" accept the recommendation, steps are then taken for the placement of the child. If the parents do not consent, then the Bureau of Attendance petitions the Family Court to place the child in an institution. The defendant Board of Education does not operate the residential institutions, per se, but the Board does operate schools in more than

30 such residential institutions, remand centers, psychiatric hospitals and treatment centers. [21/]

Consequences of District Superintendent's Conference

Schools for socially maladjusted pupils (formerly known as "600" schools because of their numerical designation) were established about eighteen years ago. In 1964, there were 27 of these schools with 14 annexes serving a pupil population of about 5,200. Fourteen of the 27 schools in 1964 were day schools serving about 2,000 pupils from 10 to 18 years of age. The remaining schools were located in hospitals, treatment and remand centers, and residential institutions. Of the 14 days schools, only one served girls. The other 13 served boys "whose alleged common characteristics included repeated disrupted and aggressive behaviour." The "600" schools located in hospitals, treatment and remand centers and residential institutions are staffed by defendant Board of Education personnel. These institutions are not owned or operated by the defendant Board. The "600" schools are not schools for children with retarded mental development; these children are assigned to special classes known as classes for children with retarded mental development (CRMD). Children with high I.Q. may be assigned to "600" schools. The foregoing facts are contained in plaintiffs' exhibit 3, entitled, "A Report On The '600' Schools: Dilemmas, Problems, And Solutions" prepared by Dr. Bernard Mackler from a study made by him for the defendant

Board. Dr. Mackler's report will soon be published. He testified for plaintiffs on the trial of this case. His testimony was substantially the same as the material contained in his report. Dr. Mackler's chief recommendation is that the "600" schools be abolished. His indictment of this relatively new system of school within the New York public school system reads as follows:

> "The present '600' school program attempts to protect regular teachers and students from undue or damaging disruption, and to provide a therapeutic milieu for the disturbed child. But this program is, however worthwhile, ethnically segregated,[22] inconveniently located, undersupported, organizationally unstable, and unable to meet the needs of its student body."[23] (pp. 4-5).

If the BCG should recommend that the child be placed in an institution, every possible assistance is given a cooperative parent by the District Superintendent to help the parent secure a place in an institution. However, there is a serious problem with respect to a recommendation for institutional placement. The available facilities are severely limited. This means that such placements take time. While the child is awaiting placement in an institution, the BCG may make one of the following recommendations: 1) That the child be given home instruction "if possible"; 2) That the child be suspended pending institutional placement; 3) That the child be exempted from school while he awaits institutional placement. Finally, the District Superintendent testified: "if it isn't taking too long, the child remains on suspense" pending institutional placement. (Emphasis added).

If a parent is reluctant or uncooperative or refuses to follow the recommendation of the BCG that the child be placed in an institution, the District Superintendent refers the matter to the Bureau of Attendance which then petitions the Family Court. New York Education Law, §3214.

The statute relevant to suspensions of pupils and their placement in institutions is New York Education Law, §3214.[24/] By the terms of §3214, defendant school authorities have the power to suspend a pupil after notice and a hearing, and power to order him to attend a special school ("600" school) or "to attend upon instruction under confinement at a parental school or elsewhere." The defendant Board does not maintain parental schools. Defendants, under the statute, may make an agreement for the confinement, maintenance and instruction of a pupil "with any private school, orphans' home, or similar institution controlled by persons of the same religious faith as that of" Victor, "or with the school authorities of another city or district, or with other public agencies." (Emphasis added). Such confinement may be for a period up to two years, §3214-5. The defendants cannot, by the statute's decree, order a pupil to attend a special school or to attend school upon confinement without the "consent" of his parents. However, the statute says, if his parents refuse to "consent" in writing, they "shall" be proceeded against for violating their statutory duty to see to the pupil's attendance at school. If the parents are proceeded against, a summons or warrant may issue for their appearance in the Family Court.[25] Such proceeding may result in the minor plaintiff being sent to an institution for an indefinite period of time.[26] If it is found that a pupil's parents have not violated their duty, then, under the statute, the pupil may be proceeded against for violating his duty to attend.

Statistical records produced by Miss Rakow (for her district only) for attendance periods covering the years 1965 and 1966 and the first month of 1967, show the following:[27]

1. During 1965, some pupils awaited placement in a school for socially maladjusted pupils after being suspended for as long as 4-6 months.

2. During 1966, some pupils awaited placement in a school for socially maladjusted pupils after being suspended for as long as 3 months.

3. At the end of January 1967, 3 pupils were awaiting placement in a school for socially maladjusted pupils. One was in his third month of suspension.

4. During 1965, some students awaited placement in an institution and were on suspension from 4-6 months.

5. During 1966, some students awaited placement in an institution on suspension from 7-10 months.

6. On January 4, 1967, the records show, one student on suspension from 7-8 months was awaiting institutional placement.

7. On January 4, 1967, the records show, one student was returned to his original school upon being in his second month of suspension and one student was transferred to another school (not a school for socially maladjusted students) upon being on suspension for a period of 7-8 months.

8. In 1965, one student was returned to his original school after an elapse of 9-10 months on suspension.

Exemption is defined by Circular No. 16 "as the withdrawal of a child's right to attend a public school." The Circular merely says that, "Authority to exempt from required school attendance is reserved to the Superintendent of Schools" (p. 6, ftn 2). However, as stated above, the BCG can recommend exemption. These recommendations are invariably accepted. One clear instance in which an exemption may be recommended is for medical reasons (physical or mental) as determined by BCG. An instance revealed by the records of suspended students is the case of a 15-year old student with a history of behavior problems and emotional difficulty who was exempted from required attendance at public school. There is no definite indication as to what extent this exemption was "medically" based. How frequently this device is used with juveniles who have behavior problems and are approaching the voluntary school leaving age of 16 is not ascertainable since the court reviewed only the records of recent suspensions in School District No. 1 and not of the entire New York City School system.

As a result of a review of the testimony, exhibits and records produced by the District Superintendent, this court finds that a "Guidance Conference" can ultimately result in loss of personal liberty to a child or in a suspension which is the functional equivalent of his expulsion from the public schools or in a withdrawal of his right to attend the public schools.

This court also finds that as a result of a "Guidance Conference", adult plaintiffs may be in jeopardy of being proceeded against in a child neglect proceeding in the Family Court.

For the foregoing reasons, this court concludes that the due process clause of the Fourteenth Amendment to the Federal Constitution is applicable to a District Superintendent's Guidance Conference. More specifically, this court concludes that enforcement by defendants of the "no attorneys provision" of Circular No. 16 deprives plaintiffs of their right to a hearing in a state initiated proceeding which puts in jeopardy the minor plaintiff's liberty and right to attend the public schools.

Due Process and the Right to a Hearing

One of the basic constitutional components of a hearing was described more than three decades ago by the United States Supreme Court:

> "What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his

defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense. (Emphasis added)." Powell v. Alabama, 287 U.S. 45, 68-69 (1932).

And when does due process require a hearing?

"Whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law. The minimum procedural requirements necessary to

> satisfy due process depends upon the circumstances and the interests of the parties involved." Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961) at 155, cert. denied, 368 U.S. 930.

As Mr. Justice Frankfurter's concurring opinion in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123 (1951) at 163 indicated, the question of whether the procedure to which plaintiffs here will be subjected duly observes

> " 'the rudiments of fair play'. . . cannot . . .be tested by more generalities or sentiments abstractly appealing. The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished--these are some of the considerations that must enter into judicial judgment."

Serious consequences flow for the juvenile involved in a District Superintendent's Guidance Conference--in many cases without opportunity for subsequent court hearing in which the right to counsel would be present. Proceedings which involve the loss of liberty and the loss of education are of "critical importance" both to the persons involved and to our system of justice. Any such proceeding must meet federal constitutional standards of fairness. In the recent case of Kent v. United States, 383 U.S. 541 (1966), which involved procedures for referral of a youthful offender from the juvenile court to the adult criminal court, the Supreme Court etched in language not to be misunderstood what fairness entails in areas of critical importance when dealing with juveniles:

> "We do not consider whether, on the merits, Kent should have been transferred; but there is no place in our system of law for reaching a result of such tremendous consequences without ceremony--without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary

> if society's special concern for children . . . permitted this procedure. We hold that it does not." Id. at 554.
>
> "The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice. . ." Id. at 561.

It was not clear whether the holding in Kent, supra, was on statutory or constitutional grounds, but a recent decision, following Kent has held that the standard laid down in that case is of constitutional dimensions, Brown v. New Jersey, 35 U. S. L. Week 2553 (Mar. 9, 1967) which is also the view of this court.

The Constitution of the State of New York mandates that the legislature provide free public schools for the education of all the children of the state. Art. XI, Section 1. In New York, a person over five and under twenty-one is "entitled" to attend the free public schools in the district or city in which such person resides. New York Education Law, Section 3202-1.

To a minor child in New York, the right to a public school education is of monumental value; it will produce great benefits for him in both tangible and intangible terms in later life. In addition, the education of each child is of paramount importance to us as a nation. A democracy can have no more precious resource than its citizenry. As the United States Supreme Court has observed:

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultured values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." Brown v. Board of Education, 347 U. S. 483, 493 (1954).

The valuable right to a public school education which New York has made available to all children of the state should not be invaded or denied an individual child without the proper safeguards of procedural fairness. New York has recognized a similar obligation in disciplinary proceedings for state employees, Fusco v. Moses, 304 N. Y. 424 (1952) and in revocation of state licenses proceedings, Hecht v. Mohaghan, 307 N. Y. 461 (1954). How can obligations of procedural fairness be any the less applicable when a child's education is at stake? See, Reich, "The New Property", 73 Yale L. J. 733 (1964).

Neither here nor in our dicussion below will we concern ourselves with the principal's suspension discussed in Circular No. 16. Those suspensions involve a maximum of five days and their consequences are not nearly as far reaching as those of the District Superintendent's Guidance Conference.

Legal Effect of Consequences of District Superintendent's Conference

As the evidence and the applicable statutes disclose, the consequences of a Guidance Conference can be very serious for both the minor child involved and his parents. According to Circular No. 16 and the testimony, not only can the District Superintendent decide to reinstate a pupil in his original school or transfer him to a different school but can also place the pupil in a special school for "socially maladjusted children". It cannot be doubted that a certain stigma attaches to the designation "socially maladjusted child" and to placement in such a special school. Circular No. 16 says: " A suspended pupil who is subsequently remanded to Youth House or to the Psychiatrist Division of Kings County Hospital or Bellevue Hospital is automatically placed on the register of the school for socially maladjusted children. . ." (P. 6, ftn 3). However beneficient the motives of the school authorities in protecting the interest of the child, the fact remains, as Dr. Mackler testified, that the decision is stigmatizing and one of great psychological consequence to the child. This state created stigma is imposed by the decisions coming out of the Guidance Conference--decisions which the evidence discloses are essentially ex parte determinations.

In addition to commitment to a special school for socially maladjusted pupils, the District Superintendent may refer the pupil to the BCG for study and recommendations. These recommendations may include: attendance at a school for socially maladjusted pupils, medical suspension, home instruction, exemption from school attendance or temporary exemption from school while the parents seek institutional help.

Pending the BCG's recommendations, the District Superintendent may continue a pupil on suspension. The evidence reveals that some pupils may be out of school a whole year, or its equivalent, i.e., 7-10 months, awaiting institutional placement. Even in the case of pupils transferred to another school, (other than a school for the socially maladjusted) the suspension can be as long as 7-8 months. Such prolonged suspension, as opposed to the minor disciplinary 5-day principal's suspension, must have very serious educational consequences for the child involved. Not only may extended suspension greatly damage a child in his opportunity for education, but in some cases it may be the functional equivalent of an expulsion from the public school. For a child who has been forced to be out of school eight months and who while so suspended passes the school leaving age, the incentive to return to school under the heavy educational handicap which such a long suspension obviously inflicts, must be very small indeed.

Moreover, the BCG can recommend that the child be exempted from school. If such a recommendation is approved by the defendant Superintendent of Schools, enforcement of such a recommendation may operate as a sophisticated expulsion.

If the BCG recommends that a suspended child be placed in a school for socially maladjusted children or an institution either for mental health or other reasons, that recommendation is carried out by the guidance counselor assigned to the District Superintendent's office and the Bureau of Attendance. The parents are contacted by the guidance counselor or the Bureau of Attendance and the parents consent to such institutional placement is secured. There is the requirement of parental "consent" before such confinement, but this consent is wholly illusory. Such consent can be withheld only on pain of prosecution under another state statute for neglect of parental duties. The statute on its face calls for such action. New York Education Law, §3214-5c(1) and §3212. "Consent" given in such circumstances cannot be said to carry with it that element of voluntariness recognized as "consent" in law. Cf., *Johnson v. Zerbst*, 304 U.S. 458 (1938). The parents are presented with "a choice between the rock and the whirlpool." Cf., *Garrity v. New Jersey*, ____U.S.____, 87 S. Ct. 616 (1967) at 618. The jeopardy that lack of consent to their child's confinement poses for a parent after a Guidance Conference further points up the seriousness of what is at stake. We are well outside the realm of minor ministerial or disciplinary school matters.

The Guidance Conference may result in a referral of the suspended child to the Bureau of Attendance for court action. Such court action may also result in confinement to a state institution for an indefinite period of time.[28/]

Finally, one consequence of a Guidance Conference may be that any decision made by the District Superintendent may be furnished the Family Court in a subsequent juvenile delinquency proceeding when the court considers what disposition may be made of the child. Plaintiffs claimed that any statements made by them during the Guidance Conference might be admitted into evidence against them in subsequent Family Court proceedings. However, the admissibility of any statement made during the Guidance Conference as presently conducted is now the subject of considerable doubt. Garrity v. New Jersey, supra; Spevack v. Klein, ____ U.S.____ 87 S. Ct. 625 (1967); Miranda v. Arizona, 384 U.S. 436 (1966). In the matter of Gregory W., 18 N.Y. 2d 55 (1966) the highest court of the State of New York held the due process clause of the Fourteenth Amendment applicable to juvenile delinquency proceedings. In so holding, New York Court of Appeals said:

> "While the Family Court Act specifically states that the proceedings held thereunder are not criminal in nature, the various provisions made for the protection of the rights of children who are charged with juvenile delinquency are indicative of a legislative recognition of the fact that such proceedings, resulting as they do in a loss of personal freedom, are at

> the very least quasi-criminal in nature. As the legislative committee report states, 'Any commitment-whether "civil" or "criminal", whether assertedly for "punitive" or "rehabilitative" purposes--involves a grave interference with personal liberty.'" In the matter of Gregory W., supra, at 62.

Consequently, enforcement of the "no attorneys provision" of Circular No. 16 may deprive plaintiffs of their right against self incrimination but this court finds it unnecessary to so hold.

What is certain, however, and what this court now holds is that enforcement of the "no attorneys provision" at a District Superintendent's Guidance Conference results in depriving plaintiffs of their constitutionally protected right to a hearing. A hearing is required by state law before a child can be committed to "a special day school, or to attend upon instruction under confinement at a parental school or elsewhere, . . . for a period not exceeding two years. . ." New York Education Law, §3214-5a. However, the "no attorneys provision" of Circular No. 16 operates to deprive the statutorily decreed hearing of an element so essential thereto as to nullify the right to a hearing.

Fundamental fairness dictates that a student cannot be expelled from a public educational institution without notice and hearing. Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961) cert. denied 368 U. S. 930 (College expulsion). This principle has been applied to suspension from a state university. Knight v. State Board of Education, 200 F. Supp. 174 (M. D. Tenn. 1961). Arbitrary expulsions and suspensions from the public schools are also constitutionally repugnant on due process grounds. Woods v. Wright, 334 F. 2d 369 (5th Cir. 1964). The need for procedural fairness in the state's dealing with college students' rights to public education, where in many instances students are adults and have already attained at least a high school diploma, should be no greater than the need for such fairness when one is dealing with the expulsion or suspension of juveniles from the public schools. Such fairness seems especially required when the child involved has yet to acquire even the fundamental educational prerequisites that would allow him to go on to college. Cf., Woods v. Wright, supra.

When this court considers the totality of the facts and circumstances here, the right to a hearing is a due process requirement of such constitutional significance as to void application of defendants' "no attorneys provision" to the District Superintendent's Guidance Conferences.

Defendants have objected that the presence of an attorney would change a "therapeutic" conference into an adversary proceeding, to the great detriment of any children involved. This court does not agree that this is the necessary consequence of having an attorney present. This court does not by this decision say that a full, judicial style hearing with cross-examination of child witnesses and strict application of the rules of evidence is required. There should be latitude for the Board in conducting such a hearing. But this latitude should not be so wide as to preclude the child and parents from exercising their constitutionality protected right to be represented at such a hearing by counsel.

In Miranda v. Arizona, supra, at pp. 479-480, the Supreme Court quotes appropriately from Mr. Justice Brandeis:

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites anarchy. To

> declare that in the administration of the criminal law the end justifies the means... would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." Olmstead v. United States, 277 U.S. 438, (1928) (dissenting opinion).

Class Relief

The class on behalf of which plaintiffs sue are all other children and their parents who are similarly situated, i.e., pupils who have been or will be suspended from school and who have been or will be notified by the District Superintendent to attend a Guidance Conference. The facts common to each pupil member of the class are: 1) the fact of suspension pursuant to the rules and regulations of Circular No. 16; and 2) the fact that each faces an administrative suspense hearing in the District Superintendent's office. The question of law common to each member of the class, both parents and pupils, is whether the "no attorneys provision" of Circular No. 16 can be enforced against them. As the Director of the Bureau of Child Guidance testified, most of the pupils involved in the administrative suspense are members of "multi-problem families". The expression "multi-problem families" appears to be a euphemism for the new aliens in our midst--the urban poor.[29/] An examination of the files of the pupils who have been suspended in District No. 1 over the past two years illuminates the problems presented to the defendant school authorities by the behavior problem child and the emotionally disturbed child. These children emerge, in the main, from the quagmire of urban poverty and the vast social distortions which now infect the inner city.[30/] In the case of the children whose parents are recently arrived Puerto Ricans, there is sometimes the added problem of lack of "acculturation", to use the expression of the Director of the Bureau of Child Guidance. Difficult as the problems thus presented might be, they are not a reason for setting aside constitutional guarantees. Cooper v. Aaron, 358 U.S. 1 (1958); Buchanan v. Warley, 245 U.S. 60 (1917). For most of these children, perhaps, the one state conferred benefit which they have of greatest monetary value is the right which has been given them by state law to attend the public schools without charge. See, Reich, The New Property, 73 Yale Law Journal 733 (1964). This right, of course, is subject to the reasonable rules of school discipline, but when those rules operate to effectively deny or withdraw the right or to deprive a child of his liberty, the due process clause of the Fourteenth Amendment requires a hearing, as defined above, before such state action can take effect. Dixon v. Alabama State Board of Education, supra; Knight v. State Board of Education, supra; See, Woods v. Wright, supra.

> "It is, of course, quite true that the responsibility for public education is primarily the

concern of the States, but it is equally true that such responsibilities, like all other state activity, must be exercised consistently with federal constitutional requirements as they apply to state action". Cooper v. Aaron, supra, at p. 19.

This court, therefore, holds that enforcement of the "no attorneys provision" of Circular No. 16 at a District Superintendent's Guidance Conference violates the due process clause of the Fourteenth Amendment to the Federal Constitution in that such enforcement denies plaintiffs their right to a hearing by depriving plaintiffs of their right to be represented by counsel at such a conference if plaintiffs so desire.

An injunction will, therefore, issue restraining defendants from refusing to proceed immediately with the previously scheduled District Superintendent's Guidance Conference and restraining them from enforcing the "no attorneys provision" of Circular No. 16 (1965-1966) or any similar provisions barring the attendance of attorneys at such conferences if the attorney is selected by the child or his parents as their spokesman.

Dated: New York, New York
April 10, 1967.

CONSTANCE BAKER MOTLEY

United States District Judge

FOOTNOTES

1. The New York City public school system is divided into 30 districts.

2. This circular is a revision of an earlier circular, Circular No. 11 (1964-1965) issued February 4, 1965, and attached to the original complaint. Circular No. 16 was issued April 18, 1966 and is attached to the amended complaint.

3. Plaintiffs secured attorneys from the Legal Services Unit of Mobilization for Youth, Inc. Mobilization for Youth (MFY) is a New York membership corporation which has been granted permission by the Appellate Division of the Supreme Court of New York to practice law. MFY receives public and private funds. Some of these funds come from the Federal Government (apparently anti-poverty funds) via the City of New York. MFY also has a Social Service Unit. The evidence upon the hearing of plaintiffs' motion for preliminary injunction disclosed that MFY had an "arrangement" in the past with District No. 1 whereby social workers employed by the Social Services Unit of MFY were permitted to attend District Superintendents' hearings regarding suspension of pupils known to the agency and make a report.

4. McKinney's, Consolidated Laws of New York, Annotated, Book 29A-Judiciary-Court Acts, Part I.

5. Statement of plaintiffs' counsel on hearing of motion for preliminary injunction on March 1, 1967. The court in a juvenile delinquency proceeding may on its own motion substitute a petition to determine whether Victor is a person in need of supervision. New York Family Court Act, §§716, 731.

6. Title 28, United States Code, §§2201 and 2202.

7. See prayer of amended complaint.

8. This section provides:

(a) Only evidence that is competent, material and relevant may be admitted in a fact-finding hearing.

(b) Any determination at the conclusion of a fact-finding hearing that a respondent did an act or acts must be based on a preponderance of the evidence. For this purpose, an uncorroborated confession made out of court by a respondent is not sufficient.

9. This section provides:

1. a. In each school district of the state each minor from seven to sixteen years of age shall attend upon full time day instruction.

b. Each minor from seven to sixteen years of age on an Indian reservation, other than an Indian child, shall attend upon full time day instruction.

2. Exceptions. a. A minor who has completed a four-year high school course of study shall not be subject to the provisions of part one of this article in respect to required attendance upon instruction.

b. A minor for whom application for a full-time employment certificate has been made and who is eligible therefor may, though unemployed, be permitted to attend part time school not less than twenty hours per week instead of full time school.

3. In each city of the state and in union free school districts having a population of more than forty-five hundred inhabitants and employing a superintendent of schools, the board of education shall have power to require minors from sixteen to seventeen years of age who are not employed to attend upon full time day instruction.

10. This section provides:

1. Definition. As used in this article, a person in parental relation to a minor shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of a minor if he has assumed the charge and care of the minor because the parents or legally appointed guardian of the minor have died, are imprisoned, are insane, or have been committed to an institution, or because, they have abandoned or deserted the minor or are living outside the state or their whereabouts are unknown.

2. Duties of persons in parental relation. Every person in parental relation to a minor included by the provisions of part one of this article:

*   *   *

b. Shall cause such minor to attend upon instruction as hereinbefore required, and to comply with the provisions of part one of this article with respect to the employment or occupation of minors in any business or service whatever.

11. This section provides:

1. School delinquent. A minor under seventeen years of age, required by any of the provisions of part one of this article to attend upon instruction, who is an habitual truant from such instruction or is irregular in such attendance or insubordinate or disorderly during such attendance, is a school delinquent.

2. Special day schools. The school authorities of any city or school district may establish schools or set apart rooms in public school buildings for the instruction of school delinquents, and fix the number of days per week and the hours per day of required attendance, which shall not be less than is required of minors attending the full time day schools.

11.Cont'd

3. Parental schools. Such authorities may also establish parental schools for the confinement, maintenance and instruction of school delinquents.

4. Agreements for instruction, confinement and maintenance of school delinquents elsewhere. Such school authorities may also make agreements for the confinement, maintenance and instruction of school delinquents, with any private school, orphans' home, or similar institution controlled by persons of the same religious faith as that of the school delinquent or with the school authorities of another city or district, or with other public agencies.

5. Commitment and parole of a school delinquent.
a. Hearing. After reasonable notice to a school delinquent and to the person in parental relation to him and an opportunity for them to be heard, a public school official, as hereinafter provided, may, with the consent in writing of the person in parental relation to the school delinquent, order him to attend a special day school, or to attend upon instruction under confinement at a parental school or elsewhere, as hereinbefore provided, for a period not exceeding two years but in no case after the minor reaches the maximum age of required attendance upon instruction.

b. Official authorized to commit a school delinquent. the following public school officials shall have power to commit a school delinquent as hereinbefore provided:

(1) In a school district having a director of the bureau of compulsory education, school census and child welfare, such director or person authorized by the school authorities to act in his absence or disability: or the superintendent of schools.

(2) Elsewhere, school authorities, superintendents of schools, or district superintendents of schools.

c. Procedure in courts.

(1) If the person in parental relation to a school delinquent refuses to consent in writing to an order

that he attend a special day school or a parental school, or upon instructions under confinement elsewhere, such person shall be proceeded against for violating the provisions of section thirty-two hundred twelve of this article.

(2) If the court shall find that the person in parental relation has not violated the provisions of section thirty-two hundred twelve, a proceeding shall be brought against the minor for violation of part one of this article.

d. Parole of a school delinquent. The public school official authorized to commit a school delinquent by the provisions of this section shall have power to parole any school delinquent committed under its provisions.

6. Suspension of a minor. a. The school authorities, the superintendent of schools, or district superintendent of schools may suspend the following minors from required attendance upon instruction:

(1) A minor who is insubordinate or disorderly;

(2) A minor whose physical or mental condition endangers the health, safety, or morals of himself or of other minors;

(3) A minor who, as determined in accordance with the provisions of part one of this article, is feebleminded to the extent that he cannot benefit from instruction.

b. Procedure after suspension. In the case of a minor who is suspended as insubordinate or disorderly, immediate steps shall be taken for his commitment as provided in this section, or for his attendance upon instruction elsewhere; in the case of a minor suspended for other cause, the suspension may be revoked whenever it appears to be for the best interest of the school and the minor to do so.

11. Cont'd

7. Expense. a. The expense attending the commitment and costs of maintenance of any school delinquent shall be a charge against the city or district where he resides, if such city or district employs a superintendent of schools; otherwise it shall be a county charge.

b. The school authorities may institute proceedings before a court having jurisdiction to determine the liability of a person in parental relation to contribute towards the maintenance of a school delinquent under sixteen years of age ordered to attend upon instruction under confinement. If the court shall find the person in parental relation able to contribute towards the maintenance of such a minor, it may issue an order fixing the amount to be paid weekly.

12. This section provides:

A "neglected child" means a male less than sixteen years of age or a female less then eighteen years of age

(a) whose parent or other person legally responsible for his care does not adequately supply the child with food, clothing, shelter, education, or medical or surgical care, though financially able or offered financial means to do so; or

(b) who suffers or is likely to suffer serious harm from the improper guardianship, including lack of moral supervision or guidance, of his parents or other person legally responsible for his care and requires the aid of the court; or

(c) who has been abandoned or deserted by his parents or other person legally responsible for his care.

13. This section provides:

The following persons may originate a proceeding under this article:

13. Cont'd

(a) a parent or other person interested in the child,

(b) a duly authorized agency, association, society or institution;

(c) a peace officer;

(d) any person having knowledge or information of a nature which convinces him that a child is neglected;

(e) a person on the court's direction.

14. This section provides:

On the filing of a petition under this article, the court may cause a copy of the petition and a summons to be issued, requiring the parent or other person legally responsible for the child's care or with whom it is domiciled to appear at the court at a time and place to answer the petition. The court may also require the person thus summoned to produce the child at the time and place named.

15. This section provides:

(a) The court may issue a warrant directing that the parent, or other person legally responsible for the child's care or with whom he is domiciled to be brought before the court, when a petition is filed with the court under this article and it appears that

(i) the summons cannot be served; or

(ii) the summoned person has refused to obey the summons; or

(iii) the parent or other person legally responsible for the child's care is likely to leave the jurisdiction; or

15. Cont'd

> (iv) a summons, in the court's opinion, would be ineffectual.
>
> (b) When issuing a warrant under this section, the court may also direct that the child be brought before the court.

16. New York Constitution. Article XI, Section 1, provides:

> The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of the state may be educated.

New York Education Law, Section 3202 (1) provides:

> A person over five and under twenty-one years of age is entitled to attend the public schools maintained in the district or city in which such person resides without the payment of tuition. . .

17. This statute provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

18. That jurisdictional statute provides:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> * * *
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom

18. Cont'd

or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

19. The complaint was amended to make this a class action.

20. As of April 5, 1967 there were 2,436 students in these special day schools. See appendix for a listing of special day schools.

21. As of April 5, 1967 there were 643 students receiving New York City Board of Education instruction in remand centers, 1,598 in institutional schools, 774 in psychiatric hospitals and treatment centers.

22. According to Dr. Mackler's definition, a school would be ethnically segregated, in 1963, if it had less than 6 per cent or more than 30 per cent of Negro students, and/or if it had less than 5 per cent or more than 17 per cent of Puerto Rican students. Mackler, p. 4.

23. This is an account of the situation that obtained in 1963-64. However, Dr. Mackler states that what was true then "was true for the years immediately in the past and probably true today." Mackler, p.4

24. Ftn. 11, *supra*.

25. New York Family Court Act, Sections 331, 332, 335, 337.

26. *Id*. Sections 352, 355.

27. According to the records produced by Miss Rakow, court's exhibits 1--19, there were 182 new suspensions during this period.

28. New York Family Court Act, Sections 352, 355.

29. Mackler, A Report on the "600" Schools: Dilemmas, Problems, and Solutions.

30. Ibid.

ty Of Wisconsin

Please Retain Original Order

Box 35
Folder 11

MOBILIZATION FOR YOUTH INC.
LEGAL SERVICES UNIT
65 EAST 7TH ST., NEW YORK, N. Y. 10003, OR 7-0400

HAROLD J. ROTHWAX
DIRECTOR

NANCY E. LEBLANC
ASSOCIATE DIRECTOR

ROBERT SUGERMAN
MANAGING ATTORNEY

SUE ANN SHAY
STAFF ATTORNEY

May 3, 1967

Steve Nagler, Esq.
Room 1030
150 Nassau Street
New York, N. Y. 10038

Dear Mr. Nagler:

Complying with your request, we are pleased to enclose copy of the decision concerning school suspensions.

Sincerely,

Robert Sugerman
ROBERT SUGERMAN

RS:Lp

Annex

COPY

CITIZENS' COMMITTEE FOR CHILDREN
OF NEW YORK, INC.

112 EAST 19 STREET • NEW YORK, N. Y. 10003 • SPRING 7-3800

May 4, 1967

Mrs. Rhoda Karpatkin
660 Madison Avenue
New York, New York

Dear Mrs. Karpatkin:

Steve Nagler told me that you are working on the first draft of the school suspension amicus curiae brief. We thought you might find the enclosed materials, some of which I wrote merely for my own files, of some use to you depending upon how broad your arguments are going to be.

If I can be of any further help, just call. I gather that Steve, you, Brian Glick and I will get together soon when you have done the draft, for which I thank you.

Sincerely yours,

Leah Marks (Miss)
Staff Attorney

LM/fh

Enclosures

cc: Mr. Nagler ✓

**SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY** inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

May 12, 1967

C. U. S A
320 Nostrand Avenue
Brooklyn, New York 11216

Re: MADERA v. BOARD OF EDUCATION

Dear Friend:

As you have undoubtedly read, the decision in the above entitled case, MADERA v. BOARD OF EDUCATION, decided by Judge Constance Motley, has been stayed in the United States Court of Appeals for the Second Circuit. This decision concerned the refusal of the New York City Board of Education to permit the parents of a child suspended from school to have an attorney present at the suspension hearing. Many children have been unjustly suspended; others while suspended have been kept away from school for illegal periods of time. While the Board of Education has the right to maintain reasonable order in school, such right may not be used to ignore its duty to educate children. On too many occasions the Board has neglected this duty, particularly since such neglect has generally fallen mainly on minority children.

Judge Motley's decision attempts to redress this imbalance against minority children.

We are in the process of preparing a draft of a brief in support of this decision of Judge Motley. We would like to hear from you immediately whether you wish to appear jointly with us as amicus. As soon as Rhoda Karpatkin has the draft of the brief ready, which I trust will be fairly soon, we will send you a draft copy if you have previously advised us of your interest in the case. Let me know promptly whether you wish to be included. It goes without saying that all amici will participate equally in this endeavour.

Sincerely,

Carl Rachlin

Carl Rachlin
General Counsel

CR:n

Contributions are deductible for income tax purposes

■ *president;* Andrew E. Norman ■ *vice presidents;* William S. Ellis, Nannette Sachs ■ *secretary;* Ezra Levin ■ *treasurer;* Shelley Appleton ■ *executive director;* Marvin Rich ■ *leadership development director;* Ronnie M. Moore ■ *legal director;* Carl Rachlin ■ *BOARD OF DIRECTORS;* Nils R. Douglas, *chairman* ■ John P. Allison ■ Robert Ausnit ■ James Baldwin ■ Katrina McCormick Barnes ■ Canon James P. Breeden ■ Dr. Kenneth B. Clark ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S. J. ■ John Henry Faulk ■ Michael O. Finkelstein ■ Doris Freedman ■ Dr. Edward L. Gibson ■ James T. Harris ■ Claude Heckscher ■ Norman Hill ■ Clarence B. Jones ■ Dr. Archie Lacey ■ Joann List Levinson ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Richard J. Schwartz ■ Elaine Slater ■ Norman Thomas ■ Rowland Watts ■

UNITED NEIGHBORHOOD HOUSES
of New York, inc.

114 EAST 32nd STREET
NEW YORK, N. Y. 10016
LExington 2-7360

James Felt
President

Helen M. Harris
Executive Director

May 15, 1967

Mr. Carl Rachlin, General Counsel
Scholarship, Education and Defense
Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Dear Carl:

Thank you for inviting United Neighborhood Houses to join with you as amicus in the Madera v. Board of Education case.

I do not think we are prepared to do this, not because we disagree with the decision but for several other reasons I won't bother you with. Therefore, we regretfully decline.

Sincerely,

Helen M. Harris
Executive Director

HMH:jb

373

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

PAUL B. DE WITT
EXECUTIVE SECRETARY

May 25, 1967

My dear Mr Rachlin,

Your letter of May 12th has been referred to Mr Louis A. Craco, 1 Chase Manhattan Plaza, the Chairman of our Committee on Civil Rights. You will hear from him if his Committee does recommend joining in your brief.

Sincerely yours,

Carl Rachlin, Esq
150 Nassau Street
New York, New York 10038

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

COMMITTEE ON CIVIL RIGHTS

IS A. CRACO, CHAIRMAN
HASE MANHATTAN PLAZA
NEW YORK, N. Y. 10005
HANOVER 2-3100

May 26, 1967

Carl Rachlin, Esq.
150 Nassau Street
New York, N. Y. 10038

Dear Mr. Rachlin:

Mr. Paul DeWitt has referred your letter of May 12, 1967 with regard to Madero v. Board of Education to me as Chairman of the Civil Rights Committee of the Association. I regret to advise you that we will not be in a position to join as amicus in your brief or to file one ourselves.

Very truly yours,

Louis A. Craco

Louis A. Craco

LAC:rp
cc: Mr. Paul DeWitt

Madera

HERBERT J. FARBER ASSOCIATES
PUBLIC RELATIONS COUNSEL
122 EAST THIRTY-SEVENTH STREET
NEW YORK 16, NEW YORK
MUrray Hill 5-6335

May 29, 1967

Mr. Marvin Rich
SEDFRE
150 Nassau Street
New York, N.Y. 10038

Dear Marv:

I found Friday's lawyers' conference both interesting and informative and think that the Madera case is indeed worthy of being publicized.

Could you have Carl contact me just as soon as your brief is filed in the U.S. Court of Appeals. I understand from him that the petition of the amici will be ready this week.

I am enclosing a copy of an editorial from the June 13th Look that I think you will be interested in seeing. Would you care to comment in the form of a letter to the editor? Further, have you had any thoughts on the weekend article about legal aid to the poor? I'd like to discuss this with you.

Cordially,

Ian

Ian T. Macauley

IM/ak

encl.

RECEIVED
MAY 31 1971
SEDF

The City of New York

1664

LAW DEPARTMENT
MUNICIPAL BUILDING, NEW YORK, N. Y. 10007

J. LEE RANKIN, *Corporation Counsel*

June 6, 1967

Carl Rachlin, Esq.,
150 Nassau Street,
New York, N.Y. 10038

Re: Madera v Board of Education
U.S. Court of Appeals No. 31346

Dear Mr. Rachlin:

We are informed that you have been granted, or have applied for, status as Amicus Curiae in the appeal herein. Because of this, I am enclosing a copy of our brief on appeal.

Very truly yours,

LUIS M. NECO
Assistant Corporation Counsel

(Enclosure)

BOARD OF EDUCATION OF THE CITY OF NEW YORK

LISTING OF SPECIAL SCHOOLS

Type "600" Day Schools Operated by the Board of Education

SCHOOL NAME OR NUMBER		ADDRESS	SCHOOL YEARS
Livingston	P-8-M: P-621-M	29 King Street, N.Y. 10014	7-12
Manhattan	P-58-M: P-622-M	490 Hudson St., N.Y. 10014	9-12
Cyrus W. Field	P-82-M: P-614-M	113 E. 4th St., N.Y. 10003	5-8
Francis Parkman	P-91-M: P-624-M	198 Forsyth St., N.Y. 10002	9-11
Peter Cooper	P-148-M	466 West End Ave., N.Y. 10024	5-9
John Barry	P-169-M: P-612-M	113 East 87th St., N.Y. 10028	K-9
Lewis and Clark	P-12-X: P-615-X	2555 Tratman Ave., N.Y. 10461	5-9
John Paul Jones	P-135-X: P-611-X	170 Brown Place, N.Y. 10454	Ungraded
Nathaniel Greene	P-36-K: P-617-K	251 Stagg St., Brooklyn 11206	5-9
Sterling School	P-85-K: P-614-K	227 Sterling Pl. Brooklyn 11238	9-11
James Lawrence	P-369-K: P-613-K	387 State St. Brooklyn 11217	5-9
Jim Thorp	P-370-K: P-616-K	3001 West 1st. St. Brooklyn 11224	5-8
Lillian L. Rashkis	P-371-K: P-615-K	36th St. & 4th Ave. Brooklyn 11232	5-8
Orville Wright	P-4-Q: P-613-Q	39-25 Crescent St., L.I.City 11101 NY	5-9
Walter Reed	P-9-Q: P-612-Q	58-74 57th St. Maspeth 11378 NY	K-9

oln School	P-23-Q: P-634-Q	138-11 35th Ave.Flushing 11354 NY	5-9
ert E. Peary	P-75-Q: P-611-Q	511 Seneca Ave.Ridgewood 11237 NY	5-9

nd Centers and Annexes

E OR NUMBER OF CENTER OR ANNEX	ADDRESS	OWNER, OPERATOR OR SPONSOR
th House - Girls P-187-X: P-613-X	765 Manida St.,N.Y. 10459	Youth House, Inc.
ex - Metropolitan Staff Home	Welfare Island, N.Y. 10017	" " "
ex - Spofford Ave.	1221 Spofford Ave., N.Y. 10459	" " "
th House - Boys P-188-X: P-614-X	1221 Spofford Ave., N.Y. 10459	" " "
ex: Zerega Ave. Camp	1188 Zerega Ave., N.Y. 10462	" " "
ex: Forest Nbrd. House	955 Tinton Ave., N.Y. 10456	" " "

titutional Schools

E OR NUMBER OF SCHOOL	ADDRESS	OWNER, OPERATOR OR SPONSOR
ldren's Center P-35-M: P-405-M	1 East 104th St.,N.Y. 10029	Dept. of Welfare
ex Callagy Hall P-408-M	331 E. 12th St., N.Y. 10003	" " "
a Loretto P-94-M: P-617-M	Crompond Rd.,Peekskill, N.Y.	Catholic
crest Center P-176-M: P-623-M	165 Haines Rd.Bedford Hills,N.Y.	Protestant
le Flower P-181-M: P-625-M	P.O.Box 547 Wading River, NY	Catholic
santville Cot. P-182-M: P-620-M	Pleasantville, N.Y.	Jewish
er Cabrini P-202-M: P-406-M	West Park, NY	Catholic

lenwald P-186-X: P-612-X	1250 E. 229 St. N.Y. 10466	Jewish
s Island P-189-X: P-616-X	1212 Hazen St. E.Elmhurst 11370	Dept.of Correct
. Elizabeth's P-10-R: P-611-R	Mt. Loretto, Staten Island 10309	Catholic
. Joseph's P-25-R: P-612-R	Pleasant Plains, Staten Is. 10309	Catholic

sychiatric Hospitals, Treatment Center, Annexes or Clusters

ellevue Psy.Hosp. P-106-M: P-618-M	30th St. & 1st. Ave., N.Y. 10016	Dept.of Hosp.
-203-M (CLUSTERS)		
Astor Home	Rhinebeck, N.Y.	Catholic
Manhattan School for Emotionally Dist. Children	12 W. 12th St. NY 10003	(same as name)
Phoenix School	74 St. Marks Pl.NY 10003	Jewish
Beachbrook Nursery	2953 Av X, Brooklyn, 11235	(same, Day Care Center)
Daytop Village	450 Bayview Ave.Prince's Bay S.I.	Same
St. Mary's-in-the-Field	Valhalla, N.Y.	Protestant
-205-M (CLUSTER)		
Henry Ittleson Research Cen.	5050 Iselin Ave.Riverdale 10470	Jewish
Children's Day Treat Cen. & School	255 W. 71st. St. NY 10023	(same as name)
Hillside Hospital	75-59 263 St. Glen Oaks 11004	Jewish, D.ofHos
cobi Hospital (Annex)	Eastchester Rd., NY 10461	D. of Hosp.
Psych. Hospital (Annex)	722 W. 168th St. NY 10032	same as name
gs County Psych. Hosp. P-368-K: P-612-K	606 Winthrop St. Brooklyn 11203	D. of Hosp.
ldville, Inc. (Annex)	130 Boerum St. Brooklyn 11206	same as name

Mt. Sinai Hosp. (Annex)	1450 Madison Ave. NY 10029	Jewish
Pride of Judea (Annex)	1000 Dumont Ave. Brooklyn 11208	Jewish
Lifeline Cen. Child Devlpt. (Annex)	84-74 169 St. Jamaica, NY 11432	same as name
League School & Res. Cen. (Annex)	196 New York Ave., Brooklyn 11216	same as name day care cen
P-224-Q (CLUSTER)	30-45 42nd St., L.I.C. 11103	
City Hosp. at Elmhurst	79-01 Broadway, Elmhurst 11373	D. of Hosp.
Harlem School for Child Study	181 W 135th St. NY 10030	D. of Hosp.
Blueberry, Inc.	228 York St. Brooklyn 11201	same as nam
Ottilie Home for Children	35-70 148th St. Jamaica 11435	Protestant
Wayside Home for Girls	Valley Stream, NY	Protestant
* (day care center)		
Bethelehem Luth. Chldn's Home (Annex)	375 Fingerboard Road, S.I. 10305	Protestant
Temple Israel (Annex)	315 Forest Ave. S.I. 10301	day care ce Staten Isla Mental Heal Society

CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK

May 3, 1967

DRAFT FOR MEMBERS ATTENDING THE MEETING WITH NAT BROWN ON SCHOOL SUSPENSIONS

RE: Possible Subjects for Discussion

I. The District Superintendents' School Suspension Conferences

A. Should There Be Specific Review of the Decision to Suspend the Child?

In very few cases observed did the District Superintendent ever review the decision to suspend the child. The conference seems to be devoted to a general discussion of the kind of help the child needs and referrals to be made, with continuation of suspension from the original school assumed. The question is whether the school officials should discuss the suspension decision specifically and then discuss whether the child needs help and what kind, including a change in schools.

B. Can There Be Guarantees of Continued Educational Services

Education often awaits results from indefinite referrals suggested at the District Superintendent's conference. Shouldn't other arrangements be immediately provided?

C. Failure to Observe Circular No. 16 Which Defines Time Limits

The procedures themselves indicate the District Superintendent's Guidance Conferences should be conducted within 10 school days from the date that he receives the principal's notice to the parent of the suspension. This time limit, although often followed, is often ignored.

II. Discussion of Principals' Suspension Conferences

A. Principals Violating Circular No. 16

1. Pre-Suspension Conference

Although Circular No. 16 indicates that the principal should have a pre-suspension guidance conference at an early stage, our indications are that such pre-suspension guidance conferences seldom exist. Should not this procedure be urged more forcefully upon the principals?

2. Lengthy Suspension by Principals

Under Circular No. 16, the principal clearly has the authority to suspend a pupil only for 5 school days and longer suspensions require a district superintendent's conference. We know of cases, and have received complaints about many other cases, in which youngsters have been suspended by principals for more than the 5 day period--often for great lengths of time without any formal proceedings being held by the district superintendent. Often these lengthy suspensions are followed by a transfer to another school, but this transfer does not take place for a long time.

3. Transfers Between Schools

Should transfers between schools be made informally by principals without any higher review? This may not be a violation of present regulations, unless coupled with a long suspension, but perhaps it should be.

B. The Agreement Reached Between Franklin K. Lane High School Chapter & UFT District 19K with the District Superintendent of 19K

1. Procedures

In general, I think we would like to ask the extent to which this agreement is taken as a serious basis for further agreements regarding school suspensions. Then too, I think we might ask whether having "at least one representative member of the discipline committee" at all principal's suspension hearings, should not necessitate that the parent and child be advised of this and asked if there is someone they wish to represent them at the "suspense hearing."

Procedures aside, we may wish to question whether there need not be a definition of "physical assault against a Lane teacher" when the requirement is that no student having committed one shall ever be returned to that school.

2. Services

Having noted that the district superintendent of that district is to meet with the UFT to consider expansion of facilities for those students unable to function adequately in regular classrooms, we might ask what is being done along those lines.

III. The Need for Accepting Responsibility for Services

Among our observations is the fact that complaints against these same children for years past often indicated a need for services--from as simple a service as the obtaining of eyeglasses to the more difficult services for the emotionally disturbed. We may want to question what the school system is doing to bring these services to the children--preferably even before the serious question of suspension is raised. To quote our school suspension report, "It may be necessary to have special classes at special schools within the jurisdiction of the Board of Education, and it may be necessary that the Board take responsibility for working with other agencies in the city and state to assume responsibility for those youngsters who need even more specialized services and care than can be provided by the Board of Education.

"Whatever solutions are found, the Board of Education must develop a system that complies with its responsibility to provide educational services."

IV. Conferences Generally, District Superintendents and Principals

A. Questions about Conferences Generally

There is little uniformity about the conferences, there being great differences both in the numbers of persons attending in the various districts, the degree to which the individual parent may get outside help, and the attitude with which the conference is conducted.

One question to be raised is whether it should not be the rule to permit any adults who may be helpful to the parent and child and in discussing the child's needs (i.e. social service personnel from non-school organizations) in all conferences.

B. Community Participation

Would the Board of Education cooperate with community committees; established in each district both to be available to give the parents and children help during the conferences and to give parents and the Board help in finding proper services for the child. Such a community group could act partly as an insurance that decisions are made and services obtained as quickly as possible. The Board of Education could include in its letter of suspension to the parent, the name of the community agency and the kind of help available through it.

CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK, INC.

✓ Carl - you wanted this

STATE STATUTES MOST RELEVANT IN SCHOOL SUSPENSION CASES

I. Right to an Education

Section 3202(1)A person over five and under twenty-one years of age is entitled to attend the public schools maintained in the district or city in which such person resides without the payment of tuition....

Section 3205(1)(a)In each school district of the state each minor from seven to sixteen years of age shall attend upon full time day instruction....

(2)(b)A minor for whom application for a full-time employment certificate has been made and who is eligible therefor may, though unemployed, be permitted to attend part time school not less than twenty hours per week instead of full time school.

Section 3206 (1) The board of education of a city or district shall have power to require each employed minor from sixteen to seventeen years of age to attend upon part time instruction in accordance with the provisions of this section....

(3) The attendance of an employed minor required to attend upon part time instruction by a board of education in accordance with the provisions of this section shall be for not less than four, nor more than eight hours per week, and on such day or days of the week as the school authorities may determine.

(4) An employed minor, while temporarily unemployed, or a minor attending part time school...shall attend upon part time instruction for not less than twenty hours a week. An employed minor shall be deemed to be temporarily unemployed until he re-enters lawful employment or attends upon full time day instruction.

Section 3213 - Supervisors of attendance; attendance teachers; attendance officers; .....(1)(a) To the end that children shall not suffer through unnecessary failure to attend school for any cause whatsoever, it shall be the duty of each attendance teacher and each attendance supervisor to secure for every child his right to educational opportunities which will enable him to develop his fullest potentialities for education, physical, social and spiritual growth as an individual and to provide for the school adjustment of any nonattendant child in cooperation with school authorities, special school services and community and social agencies....

II. Limits on the Right to an Education

A. Attendance Required Only if Student is in Proper Mental and Physical Condition.

Section 3208 - Attendance of minors, proper mental and physical condition (1) A minor...shall be required to attend upon instruction only if in proper mental and physical condition.

(2) A minor whose mental or physical condition is such that his attendance... would endanger the health or safety of himself or of other minors, or who is feebleminded to the extent that he is unable to benefit from instruction, shall not be permitted to attend.

(3) A minor whose mental or physical condition is such that, because of the lack of facilities for his care, transportation and instruction, he is not permitted or required to attend upon instruction, shall be deemed in proper mental and physical condition to attend, if the lacking facilities are provided.

(4) If a minor's mental or physical condition, by virtue of which he is not required or permitted to attend upon instruction, is due to physical defects or to a physical condition which may be remedied by the taking of reasonable measures, such mental or physical condition shall justify only the temporary failure of the minor to attend.

(5) The determination of a minor's mental or physical condition...shall be based upon actual examination of the minor made by a person or persons qualified by appropriate training and experience, in accordance with regulations of the state education department. The state education department shall designate persons having the required qualifications to make such mental or physical examinations on behalf of any local school authorities, except that in a city having a population of one million or more the superintendent of schools shall designate such persons.

B. Behavior Requirement

Section 3210 (1) (a) A minor required by the provisions of part one of this article to attend upon instruction shall attend regularly as prescribed where he resides or is employed, for the entire time the appropriate public schools or classes are in session and shall be subordinate and orderly while so attending....

Section 3214 - School for delinquents.--(1) School delinquent. A minor under seventeen years of age, required by any of the provisions of part one of this article to attend upon instruction, who is an habitual truant from such instruction or is irregular in such attendance or insubordinate or disorderly during such attendance, is a school delinquent.

III. Procedures Regarding Some Uncooperative Children

A. Establishing Other Kinds of Schools

Section 3214 (2) Special day schools. The school authorities of any city or school district may establish schools or set apart rooms in public school buildings for the instruction of school delinquents, and fix the number of days per week and the hours per day of required attendance, which shall not be less than is required of minors attending the full time day schools.

(3) Parental schools. Such authorities may also establish parental schools for the confinement, maintenance and instruction of school delinquents.*

---

*Section 3204 (3) (d) For parental schools. In a parental school provision shall be made for vocational training and for instruction in other subjects appropriate to the minor's age and attainments.

B. Sending the Child "Elsewhere"

Section 3214 (4) Agreements for instruction, confinement and maintenance of school delinquents elsewhere. Such school authorities may also make agreements for the confinement, maintenance and instruction of school delinquents, with any private school, orphans' home, or similar institution controlled by persons of the same religious faith as that of the school delinquent or with the school authorities of another city or district, or with other public agencies.

1. Consent after school procedures

Section 3214 (5) Commitment and parole of a school delinquent. (a) Hearing. After reasonable notice to a school delinquent and to the person in parental relation to him and an opportunity for them to be heard, a public school official, as hereinafter provided, may, with the consent in writing of the person in parental relation to the school delinquent, order him to attend a special day school, or to attend upon instruction under confinement at a parental school or elsewhere, as hereinbefore provided, for a period not exceeding two years but in no case after minor reaches the maximum age of required attendance upon instruction.

(b) Official authorized to commit a school delinquent. The following public school officials shall have power to commit a school delinquent as hereinbefore provided:

(1) In a school district having a director of the bureau of compulsory education, school census and child welfare, such director or person authorized by the school authorities to act in his absence or disability; or the superintendent of schools.

(2) Elsewhere, school authorities, superintendents of schools, or district superintendents of schools.

2. Procedure in the courts

Section 3214(5)(c)(1) If the person in parental relation to a school delinquent refuses to consent in writing to an order that he attend a special day school or a parental school, or upon instruction under confinement elsewhere, such person shall be proceeded against for violating the provisions of section thirty-two hundred twelve* of this article.

(5)(c)(2)

If the court shall find that the person in parental relation has not violated the provisions of section thirty-two hundred twelve, a proceeding shall be brought against the minor for violation of part one** of this article.

3. Parole of a "School Delinquent."

Section 3214 (5)(d) The public school official authorized to commit a school delinquent by the provisions of this section shall have power to parole any school delinquent committed under its provisions.

4. Payment of expenses if "confined"

Section 3214 (7) Expense. (a) The expense attending the commitment and costs of maintenance of any school delinquent shall be a charge against the city or district where he resides, if such city or district employs a superintendent of schools; otherwise it shall be a county charge.

---

*Deals with the duties of a parent whose child is attending school.

**The Compulsory Education Law

(b) The school authorities may institute proceedings before a court having jurisdiction to determine the liability of a person in parental relation to contribute towards the maintenance of a school delinquent under sixteen years of age ordered to attend upon instruction under confinement. If the court shall find the person in parental relation able to contribute towards the maintenance of such a minor, it may issue an order fixing the amount to be paid weekly.

C. Suspension

Section 3214 (6) Suspension of a minor. (a) The school authorities, the superintendent of schools, or district superintendent of schools may suspend the following minors from required attendance upon instruction:

(1) A minor who is insubordinate or disorderly;

(2) A minor whose physical or mental condition endangers the health, safety, or morals of himself or of other minors;

(3) A minor who, as determined in accordance with the provisions of part one of this article, is feebleminded to the extent that he cannot benefit from instruction.

(b) Procedure after suspension. In the case of a minor who is suspended as insubordinate or disorderly, immediate steps shall be taken for his commitment as provided in this section, or for his attendance upon instruction elsewhere; in the case of a minor suspended for other cause, the suspension may be revoked whenever it appears to be for the best interest of the school and the minor to do so.

School Suspension Case - Amici May 19, 1967 Mrs Marks.

✓ASPIRA, Inc.

Big Brothers, Inc.

✓Congress of Racial Equality, Inc.

✓Citizens Committee for Children of New York, Inc.

✓EQUAL

Harlem Neighborhoods Association, Inc.

✓Massive Economic Neighborhood Development, Inc.

✓National Association for the Advancement of Colored People

✓New York Civil Liberties Union

✓New York Urban League

Puerto Rican Association for Community Affairs, Inc.

✓Puerto Rican Forum, Inc.

✓United Parents Association

✓Youth In Action

SEDFRE

MARTINEZ, HENRY vs CORE, et. al., 1965-1967

Box 39
Folder 12

Historical Society of Wisconsin

Please Retain Original Order

30 - N. J. SUMMONS
(AMENDED 9-53)

ALL-STATE OFFICE SUPPLY CO.
502 HIGH ST., NEWARK 2, N. J.

HENRY MARTINEZ,

Plaintiff ,

vs.

CONGRESS OF RACIAL EQUALITY, et al.,

Defendant .

ESSEX *County Court*

LAW *Division*

Docket No.

CIVIL ACTION

SUMMONS

The State of New Jersey
to

L. S. CONGRESS OF RACIAL EQUALITY, c/o James Farmer, Newark, N.J.

JAMES FARMER, Newark, New Jersey

You are Hereby Summoned *in a Civil Action in the* Essex *County Court of New Jersey, instituted by* Henry Martinez *,*

plaintiff , and required to serve upon Friedman & D'Alessandro, Esqs., *,*
1180 Raymond Boulevard *,*
*attorney*s *for the plaintiff , an answer to the complaint, a copy of which is herewith served upon you, within 20 days after the service of the summons upon you, exclusive of the day of service. If you fail to do so, judgment by default may be rendered against you for the relief demanded in the complaint. You shall file your original answer and proof of service with the Clerk of the* Essex *County Court, at* Newark, New Jersey *New Jersey, in accordance with the rules of civil practice and procedure.*

Dated July 21, 1965

Nicholas V. Caputo
NICHOLAS V. CAPUTO
Clerk of the Essex *County Court*

ESSEX COUNTY COURT
LAW DIVISION

DOCKET No.

HENRY MARTINEZ,

Plaintiff ,

vs.

CONGRESS OF RACIAL EQUALITY, a New York corporation, CORE NEWARK ESSEX CHAPTER, an unincorporated body, JAMES FARMER, ANDREW WASHINGTON, ROBERT CURVIN, FRED MEANS, BOYD CANTRELL, ARNOLD HARRIS, THOMAS EDWARDS, CHARLES A. TULLER, DOROTHY JONES and M.L. POWELL,

Defendant .

Defendants.

CIVIL ACTION

NOTICE TO TAKE ORAL DEPOSITIONS

TO: **Carl Kaditus, Esq.**
744 Broad Street
Newark, New Jersey

Loran, Yormark & Moran, Esqs.
786 Broad Street
Newark, New Jersey

SIR :

PLEASE TAKE NOTICE, That in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before Kabot, Battaglia & Hammer, Notaries Public and Certified Shorthand Reporters of the State of New Jersey, or other person authorized by the laws of the State of New Jersey to administer oaths on **Friday, Sept. 17,** *19***65** *at* **10** *o'clock* **A.** *M at the office of* **Friedman & D'Alessandro, Esqs., 1180 Raymond Boulevard, Newark 2, New Jersey**

with respect to all matters relevant to the subject matter involved in this action, at which time and place you will please produce the following persons whose testimony is to be taken.

JAMES FARMER, BOYD CANTRELL and they are to produce at said depositions any and all records of the corporation including the certificate of incorporation, stock record book, financial records from 1960 through 1965 and current membership list.

TAKE FURTHER NOTICE, that at the time and place aforesaid we shall also take deposition upon oral examination of the following persons:

:

FRIEDMAN & D'ALESSANDRO

Dated: Aug 7, 1965

By

CC: KABOT, BATTAGLIA & HAMMER
24 Commerce Street
Newark 2, New Jersey
MArket 2-6644

HENRY MARTINEZ,

Plaintiff ,

vs.

CONGRESS OF RACIAL EQUALITY, a New York corporation, CORE NEWARK ESSEX CHAPTER, *Defendant* .
an unincorporated body, JAMES FARMER, ANDREW WASHINGTON, ROBERT CURVIN, FRED MEANS, BOYD CANTRELL, ARNOLD HARRIS, THOMAS EDWARDS, CHARLES A. TULLER, DOROTHY JONES and M.L. POWELL,
Defendants.

ESSEX COUNTY COURT
LAW DIVISION
DOCKET No. **A-9503**

CIVIL ACTION

NOTICE TO TAKE ORAL DEPOSITIONS

TO: **Edward G. D'Alessandro, Esq.**
Friedman & D'Alessandro, Esqs.
1180 Raymond Boulevard
Newark 2, New Jersey

SIR :

PLEASE TAKE NOTICE, That in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before Kabot, Battaglia & Hammer, Notaries Public and Certified Shorthand Reporters of the State of New Jersey, or other person authorized by the laws of the State of New Jersey to administer oaths on **Wednesday, Sep** *19* **65**, *at* **10:00** *o'clock* **A** *M. at the office of* **Carl J. Kaditus, Esq., 111 Sou Orange Avenue, South Orange, New Jersey**

with respect to all matters relevant to the subject matter involved in this action, at which time and place you will please produce the following person whose testimony is to be taken.

HENRY MARTINEZ and he is to produce at said depositi any and all financial records and Income Tax statements filed wit the United States Government from 1960 through 1965, and all reco and names and addresses of employers from 1960 through 1965, and wages paid.

TAKE FURTHER NOTICE, that at the time and place aforesaid we shall also take deposition upon oral examination of the following persons:

Dated: **August 13, 1965**

KABOT, BATTAGLIA & HAMMER
24 Commerce Street
Newark 2, New Jersey
MArket 2-6644

By

CARL J. KADITUS
Attorney for CORE NEWARK ESSEX CHAPTER, an unincorporated body, and FRED MEANS

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duled this deposition
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o take the deposition of
r.

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO.

HENRY MARTINEZ, Plaintiff, vs. CONGRESS OF RACIAL EQUALITY, a New York corporation, et al., Defendants.	Civil Action ANSWER OF CONGRESS OF RACIAL EQUALITY, a New York corporation, and JAMES FARMER

Defendants, Congress of Racial Equality, a New York corporation, and James Farmer, of 38 Park Row, New York, New York, in answer to plaintiff's complaint, say:

AS TO COUNT ONE

1. They are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2 and 3.

2. They admit that plaintiff, a patrolman, shot and killed Lester Long on June 12, 1965, but inasmuch as there remain unresolved questions concerning the circumstances of that incident, they are without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 4.

3. They are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint.

4. They admit that, on June 17, 1965, a meeting was held at the office of Mayor Hugh J. Addonizio at the request of Newark Citizens for Community Action, an organization consisting of individuals active in Newark's religious, welfare, civil rights and professional organizations, that the purpose of the meeting was to suggest steps to meet the explosive situation which had arisen in Newark after the shooting and that among the suggestions was the recommendation that plaintiff be removed from duties which took him into the neighborhood where the shooting took place until the circumstances of the shooting could be investigated. Defendants, Congress of Racial Equality and James Farmer, deny that they sought or had anything to do with said meeting and they deny each and every other allegation of paragraph 6.

5. They deny the allegations of paragraphs 7 and 8.

AS TO COUNT TWO

6. In answer to paragraph 1, they repeat their answers to paragraphs 1 through 8, inclusive, of COUNT ONE.

7. They deny the allegations of paragraph 2.

AS TO COUNT THREE

8. Said COUNT is not directed against Congress of Racial Equality or James Farmer.

AS TO COUNT FOUR

9. Said COUNT is not directed against Congress of Racial Equality and James Farmer.

AS TO COUNT FIVE

10. Said COUNT is not directed against Congress of Racial Equality and James Farmer.

AS TO COUNT SIX

11. In answer to paragraph 1, they repeat their answers to paragraphs 1 through 5, inclusive, of COUNT ONE.

12. They deny the allegations of paragraphs 2 through 5, inclusive, and 7.

13. They are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

AS TO COUNT SEVEN

14. In answer to paragraph 1, they repeat their answers to paragraphs 1 through 5, inclusive, of COUNT ONE.

15. They deny the allegations of paragraphs 2 through 5, inclusive, and 7.

16. They are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

FIRST SEPARATE DEFENSE

1. Defendant, Congress of Racial Equality, is dedicated to the task of seeking equality for all races in every phase of American life.

2. One of the areas in which said defendant seeks such equality is that of law enforcement, and it is said defendant's conviction that a means of obtaining equal treatment in the area of law enforcement is the creation of civilian review boards in large cities, to

hear and pass upon the complaints which citizens may have concerning law enforcement officers.

3. After the fatal shooting of Lester Long on June 12, 1965, defendant, James Farmer, an officer of defendant, Congress of Racial Equality, spoke at a public meeting in the City of Newark, a primary purpose being to advocate the establishment of a civilian review board.

4. The actions of each of said defendants with respect to the fatal shooting of Lester Long were privileged by virtue of the First and Fourteenth Amendments of the United States Constitution.

SECOND SEPARATE DEFENSE

1. Defendants, Congress of Racial Equality and James Farmer, repeat the allegations of paragraphs 1, 2 and 3 of their First Separate Defense.

2. The actions of each of said defendants with respect to the fatal shooting of Lester Long were privileged by virtue of paragraphs 1, 2 and 6 of Article I. of the Constitution of the State of New Jersey.

THIRD SEPARATE DEFENSE

Each local chapter of the Congress of Racial Equality is an independent, self-governing body and is not subject to the authority, direction or control of the Congress of Racial Equality or of its officers, agents or employees.

Dickinson R. Debevoise
DICKINSON R. DEBEVOISE
Attorney for Defendants,
Congress of Racial Equality
and James Farmer

DATED: September 7, 1965.

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO.

HENRY MARTINEZ,	)	
Plaintiff,	)	Civil Action
vs.	)	
CONGRESS OF RACIAL EQUALITY, a New York corporation, et al.,	)	SUBSTITUTION OF ATTORNEY
Defendants.	)	

I hereby consent to the substitution of Dickinson R. Debevoise as attorney for defendants, Congress of Racial Equality, a New York corporation, and James Farmer, in the place and stead of the undersigned.

Carl Kaditus
CARL KADITUS

DATED: September 7, 1965.

Served

12/20/65

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A 9503

HENRY MARTINEZ, :

Plaintiff, :

vs. :

CONGRESS OF RACIAL EQUALITY, :
a New York corporation, et al., :

Defendants. :

Civil Action

INTERROGATORIES

TO: DICKINSON R. DEBEVOISE, ESQ.
744 Broad Street
Newark 2, New Jersey
Attorney for Defendants,
Congress of Racial Equality and James Farmer

SIR:

PLEASE TAKE NOTICE, that the plaintiff, Henry Martinez, demands of the defendants, Congress of Racial Equality and James Farmer, answers under oath, to the following interrogatories within the time prescribed by law:

1. Set forth the names and addresses of all persons known to the defendants to have any information regarding the facts set forth in the Complaint and Answer thereto.

See attached schedule.

2. State whether or not the defendant, James Farmer, at any time, publicly or privately, stated that Henry Martinez, a Newark Police Officer, should be suspended from his job. If so, set forth the time, place and names of persons to whom such statement was made.

James Farmer has no recollection of making such a statement.

3. State whether or not defendant, James Farmer, ever appeared on any television network and referred to Henry Martinez as a murderer and stated that Henry Martinez should be suspended from his job. If so, set forth the context of said statement and the time and place of same.

James Farmer did not refer to Henry Martinez as a murderer and has no recollection of stating that Henry Martinez should be suspended.

4. Set forth a copy of the corporation papers of the Congress of Racial Equality.

Was furnished at time of taking of James Farmer's deposition.

5. Set forth the officers of the Congress of Racial Equality.

National Chairman - Wilfred Ussery
Vice Chairman - Lincoln Lynch
Treasurer - William Bradley
Secretary - Ruth Turner
National Director - James Farmer

6. Set forth all of the assets of the Congress of Racial Equality, realty and personalty and the names and addresses of any banks where money is deposited.

Objected to and subject to motion to strike.

7. State whether or not the defendant, James Farmer, receives a salary from the Congress of Racial Equality, a New York corporation. If so, set forth the amount of said salary and in what capacity.

Objected to and subject to motion to strike.

8. State whether or not the defendant, James Farmer, has a drawing account for expenses from the Congress of Racial Equality. If so, set forth the amounts that were drawn during the years 1962, 1963, 1964 and 1965.

Objected to and subject to motion to strike

9. State whether or not James Farmer conferred with any of the defendants named in the Complaint prior to June 17, 1965. If so, set forth the nature of said conference, what was said and the persons present.

Objected to and subject to motion to strike.

10. State whether or not the defendant, James Farmer, had knowledge of the existence of "Exhibit A" or "Exhibit B" prior to their publication.

No.

11. State whether or not the defendant, James Farmer, at any time saw documents known as "Exhibit A" or "Exhibit B." The only time said defendant saw said documents or a copy thereof was when he saw the copies actually attached to the complaint.

12. Set forth the basis of the defendant, James Farmer's, contention that he had a Constitutional right to make any statements regarding Henry Martinez.

Objected to and subject to motion to strike.

FRIEDMAN & D'ALESSANDRO
Attorneys for Plaintiff

By Edward G. D'Alessandro
Edward G. D'Alessandro
A Member of the Firm

1. Set forth the names and addresses of all persons known to the defendants to have any information regarding the facts set forth in the Complaint and Answer thereto.

MRS REBECCA ANDRADE
148 S ORANGE AVE
NEWARK NJ

MR FRED BARBARO
AMERICAN CIVIL LIBERTIES
45 ACADEMY ST
NEWARK NJ.

REV ULYSSES BLAKELEY
910 912 MCARTR HW
NEWARK NJ

MR SAM BROWN
AMERICAN JEWISH CONGRESS
17 WILLIAM ST
NEWARK NJ

MR JAMES H BLAIR
UNITED COMMUNITY CORP
124 BRANFORD PL
NEWARK 02NJ

MRS REYNOLDS BURCH
880 SO 11TH ST
NEWARK NJ

REV BOYD C CANTRELL
66 FARLEY AVE
NEWARK NJ

MSGR THOMAS CAREY
QUEEN OF ANGELS RC CHURH
44 BELMONT AVE
NEWARK NJ

REV B T CARTWRIGHT
22 SHEPHERD AVE
NEWARK NJ

REV R W COLEMAN
187 MILFORD AVE
NEWARK NJ

MR SAMUEL H CONVISSOR
GREATER NEWARK DEV CORP
605 BROAD ST
NEWARK NJ

MR ROBERT CURVIN
106HUNTNGDON TER
NEWARK NJ

Mr. Neil Davidson - Apt. 2A
13 Riverview Crt.
Newark NJ

MR WALTER DAWKINS
171 OSBORNE TERR
NEWARK NJ

MR DICKINSON DEBEVOISE
744 BROAD ST
NEWARK NJ

MR HOWARD DEVANEY
NATIONAL CONF OF CHR&JEW
790 BROAD ST
NEWARK NJ

MR JOHN DOWNEY
101 PLANE ST
NEWARK NJ

MRS NADALINE DWORKIN
30 STENGEL AVE
NEWARK NJ

MR THOMAS F EDWARDS
196 ASTOR ST
NEWARK NJ

MR FREDERICK EWING
GRTR NEWK DEVELPMT CNCL
605 BROAD ST
NEWARK NJ

REV GORDON FOSTER
8 EVERGREEN AVE
NEWARK NJ

MR CHARLES W GARRISON
BAMBERGERS NJ
MARKET&HALSEY
NEWARK NJ

MR KENNETH GIBSON
22 ROSE TERR
NEWARK NJ

MR IRA GISSEN-ISAF DCH
240 ROUTE 22
SPRINGFIELD NJ

REV HOWARD GOERINGER
218WEEQUAHIC AVE
NEWARK NJ

MR GEORGE HANEY
AUCHINCLOSS PARKERGREDPH
60 PARK PLACE
NEWARK NJ

MR ARNOLD HARRIS
32 CENTRAL AVE
~~EAST ORANGE~~ NJ
NEWARK

DEAN C WILLARD HECKEL
RUTGERS SCHOOL OF LAW
~~53 WASHINGTON ST~~
NEWARK NJ

REV BRIAN HISLOP
174 SO VAULY RD
WEST ORANGE NJ

MRS ARNOLD HOFFMAN
RUTGERS SCHOOL OF LAW
~~53 WASHINGTON ST~~
NEWARK NJ

MR WILLIAM HOFFMAN
46 BRANFORD PL
NEWARK NJ

REV ORION HOPPER
566 RIDGEWOOD RD
MAPLEWOOD NJ

MRS JENNIE HOWELL
58 JONES ST
NEWARK NJ

REV EARL HUFF
71 WILSEY ST
NEWARK NJ

REV HORACE HUNT
449 HIGHLAND AVE
NEWARK NJ

MR JOEL R JACOBSON
N J STATE CIO UNION CONL
744 BROAD ST
NEWARK NJ

REV KINMOTH JEFFERSON
15 SCHEERER AVE
NEWARK NJ

REV ROBERT JOHNSON
910 912MCARTR HW
NEWARK NJ

MR CARL KADITUS ESQ
111 SO ORANGE AV
SO ORANGE NJ

MR SYDNEY KELLNER
AMERICAN JEWISH COMM
49 CRAWFORD PL
NEWARK NJ

MSGR JOHN J KILEY
101 PLANE ST
NEWARK NJ

MR ROBERT KOHLER
ANTI DEFAMATION LEAGUE
24 COMMERCE ST
NEWARK NJ

VERY REV L I LAUGHLIN
24 RECTOR ST
NEWARK NJ

DR HANNAH LEVIN
65 CENTRAL AVE
NEWARK NJ

REV SANFORD LONSINGER
393 RIDGE ST
NEWARK NJ

REV CONRAD MASSA
259 OZLAVAN AVE
NEWARK NJ

MRS ZAIN MATOS
326 SUSSEX AVE
NEWARK NJ

REV MSGR R M MCGUINNESS
404 PLANE ST
NEWARK NJ

MR FRED MEANS
65 MANOR DR
NEWARK 06NJ

MR WILLIAM A MERCER
311 JOHNSON AVE
NEWARK NJ

MR BERNARD MOORE
[illegible] CLIFTON AVE
NEWARK NJ

MR DUKE E MOORE SR
175PENNINGTON ST
NEWARK NJ

MR SIMEON MOSS
BOARD OF EDUCATION
31 GREEN ST
NEWARK NJ

REV A NIESE JR
TRINITY CATHEDRAL
24 RECTOR ST
NEWARK NJ

PAWLEY. ✓
MR JAMES PAULEY
URBAN LEAGUE
58 JONES ST
NEWARK NJ

MR WILLIAM D PAYNE
243 RENNER AVE
NEWARK NJ

MR THEODORE PETTIGREW
70 CRAWFORD ST
NEWARK NJ

MR PHILIP PRINCE
270 JELLIFF AVE
NEWARK NJ

RABBI JONATHON J PRINZ
TEMPLE BNAI ABRAHAM
621 CLINTON AVE
NEWARK NJ

MR RICHARD PROCTOR
92 EATON PLACE
EAST ORANGE NJ

REV ERASMO REINA
145 DEWEY ST
NEWARK, 12NJ

MR GEORGE RICHARDSON
435 SO 12TH ST
NEWARK NJ

REV JOSEPH ROBERTS
11 PARK END PL
EAST ORANGE NJ

MR WILLIAM ROGERS
516 PROSPECT AVE
MAPLEWOOD NJ

MR IRVING ROSENBERG
RETAIL UNION OF NJ
1028 BROAD ST
NEWARK NJ

MRS IRVING ROSENBERG
603 ELIZABETH AV
NEWARK NJ

REV JAMES SCOTT
117W MARKET ST
NEWARK NJ

MR IRVIN L SOLONDZ
ADA 790 BRD ST
NEWARK NJ

MR NORMAN STEINLAUF
UNITED COMMUNITY CORP
124 BRANFORD PL
NEWARK 02NJ

MR TIMOTHY STILL
45 17TH AVE
NEWARK NJ

MRS SUSAN STROM
GIRL SCOUT COUNCIL
81 MAIN STREET
ORANGE NJ

REV JOSEPH A TOLB
QUEEN OF ANGELS CHURCH
44 BELMONT AV
NEWARK 03NJ

MR PHILIP THIGPEN
NEWARK HOUSING AUTHORITY
57 SUSSEX AV
NEWARK NJ

REV EDGAR THOMAS
152 ACADEMY ST
SO ORANGE NJ

MR PATRICK E IORIA
18 SHERIDAN AVE
WEST ORANGE NJ

MR JAMES TREADWELL
662 BELMONT AVE
NEWARK NJ

J THREATT EXEC DIR
MAYORS COMM ON HUMAN RTS
CITY HALL
NEWARK NJ

RABBI ISRAEL TURNER
246 SHEPHARD AV
NEWARK NJ

REV JACK WHALEY
MT OLIVET BAPT CHURCH
119 MONTGOMERY S
NEWARK NJ

MR DEREK WINANS
311 MT PROSPECT
NEWARK 04NJ

The Rev. Theodore R. Gibson
Miami, Florida

Mr. Leonard Zeitz
Hospital Review and Planning Council
3 East 54th Street
New York, New York

Miss Nancy Stedman
CORE
38 Park Row
New York, New York

Mr. Val Coleman
CORE
38 Park Row
New York, New York

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILFULLY FALSE, I AM SUBJECT TO PUNISHMENT FOR CONTEMPT OF COURT, AS PROVIDED BY R.R.1:27F.

James Farmer
JAMES FARMER

CONGRESS OF RACIAL EQUALITY

By James Farmer

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A-9503

HENRY MARTINEZ,)
Plaintiff,) Civil Action
vs.)
CONGRESS OF RACIAL EQUALITY, a New York corporation, et al.,)
Defendants.)

NOTICE OF MOTION TO STRIKE INTERROGATORIES

TO: FRIEDMAN & D'ALESSANDRO, Esqs.
Attorneys for Plaintiff
1180 Raymond Boulevard
Newark 2, New Jersey

MAX MEHLER, Esq.
Attorney for Defendant Arnold Harris
744 Broad Street
Newark 2, New Jersey

CARL J. KADITUS, Esq.
Attorney for Defendants
Core Newark Essex Chapter,
Fred Means and Robert Curvin
111 South Orange Avenue
South Orange, New Jersey

THOMAS L. PARSONNET, Esq.
Attorney for Defendant Thomas Edwards
1060 Broad Street
Newark, New Jersey

MILTON YORMARK, Esq.
Attorney for Defendant Boyd Cantrell
786 Broad Street
Newark, New Jersey

SIRS:

PLEASE TAKE NOTICE that, on January 14, 1966, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned, attorney for defendants, Congress of Racial Equality and James Farmer, will apply to the Essex County Court, Law Division, at the Court House, Newark, New Jersey, for an order to strike out the following interrogatories served upon said defendants by plaintiff on December 20, 1965, upon the following grounds:

1. Interrogatories 6, 7 and 8 are not relevant to the subject matter involved in this action.

2. Interrogatory 9 is vague, ambiguous and uncertain, and to the extent that it calls for information concerning conferences which took place before the shooting alleged in the complaint or to the extent that it calls for information concerning conferences having nothing to do with plaintiff, it is not relevant to the subject matter involved in this action.

3. Interrogatory 12 calls for an opinion and a legal conclusion which said defendants are neither competent nor obliged to furnish.

Attached hereto is a copy of the Interrogatories served upon defendants, Congress of Racial Equality and James Farmer, on December 20, 1965.

DICKINSON R. DEBEVOISE
Attorney for Defendants,
Congress of Racial Equality
and James Farmer

DATED: December 29, 1965.

Served 12/20/65

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A 9503

HENRY MARTINEZ, :
Plaintiff, :
vs. :
CONGRESS OF RACIAL EQUALITY, :
a New York corporation, et al., :
Defendants. :

Civil Action

INTERROGATORIES

TO: DICKINSON R. DEBEVOISE, ESQ.
744 Broad Street
Newark 2, New Jersey
Attorney for Defendants,
Congress of Racial Equality and James Farmer

SIR:

PLEASE TAKE NOTICE, that the plaintiff, Henry Martinez, demands of the defendants, Congress of Racial Equality and James Farmer, answers under oath, to the following interrogatories within the time prescribed by law:

1. Set forth the names and addresses of all persons known to the defendants to have any information regarding the facts set forth in the Complaint and Answer thereto.

2. State whether or not the defendant, James Farmer, at any time, publicly or privately, stated that Henry Martinez, a Newark Police Officer, should be suspended from his job. If so, set forth the time, place and names of persons to whom such statement was made.

3. State whether or not defendant, James Farmer, ever appeared on any television network and referred to Henry Martinez as a murderer and stated that Henry Martinez should be suspended from his job. If so, set forth the context of said statement and the time and place of same.

4. Set forth a copy of the corporation papers of the Congress of Racial Equality.

5. Set forth the officers of the Congress of Racial Equality.

6. Set forth all of the assets of the Congress of Racial Equality, realty and personalty and the names and addresses of any banks where money is deposited.

7. State whether or not the defendant, James Farmer, receives a salary from the Congress of Racial Equality, a New York corporation. If so, set forth the amount of said salary and in what capacity.

8. State whether or not the defendant, James Farmer, has a drawing account for expenses from the Congress of Racial Equality. If so, set forth the amounts that were drawn during the years 1962, 1963, 1964 and 1965.

9. State whether or not James Farmer conferred with any of the defendants named in the Complaint prior to June 17, 1965. If so, set forth the nature of said conference, what was said and the persons present.

10. State whether or not the defendant, James Farmer, had knowledge of the existence of "Exhibit A" or "Exhibit B" prior to their publication.

11. State whether or not the defendant, James Farmer, at any time saw documents known as "Exhibit A" or "Exhibit B."

12. Set forth the basis of the defendant, James Farmer's, contention that he had a Constitutional right to make any statements regarding Henry Martinez.

FRIEDMAN & D'ALESSANDRO
Attorneys for Plaintiff

By Edward G. D'Alessandro
Edward G. D'Alessandro
A Member of the Firm

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILFULLY FALSE, I AM SUBJECT TO PUNISHMENT FOR CONTEMPT OF COURT, AS PROVIDED BY R.R.1:27F.

____
JAMES FARMER

CONGRESS OF RACIAL EQUALITY

By__________________________________

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A-9503

HENRY MARTINEZ,	)	
Plaintiff,	)	Civil Action
vs.	)	NOTICE OF MOTION TO DISMISS OR TO COMPEL ANSWERS TO INTERROGATORIES
CONGRESS OF RACIAL EQUALITY, a New York corporation, et al.,	)	
	)	
Defendants.	)	

TO: FRIEDMAN & D'ALESSANDRO, ESQS.
Attorneys for Plaintiff
1180 Raymond Boulevard
Newark 2, New Jersey

MAX MEHLER, ESQ.
Attorney for Defendant Arnold Harris
744 Broad Street
Newark 2, New Jersey

CARL J. KADITUS, ESQ.
Attorney for Defendants
Core Newark Essex Chapter,
Fred Means and Robert Curvin
111 South Orange Avenue
South Orange, New Jersey

MILTON YORMARK, ESQ.
Attorney for Defendant Boyd Cantrell
786 Broad Street
Newark, New Jersey

SIRS:

PLEASE TAKE NOTICE that, on February 11, 1966 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, the undersigned, attorneys for defendants, Congress of Racial Equality and James Farmer, will apply to the Essex County Court, Law Division, at the Court House, Newark, New Jersey, for an order dismissing the plaintiff's complaint against the defendants, Congress of Racial Equality and James Farmer, or in the alternative for an order compelling the plaintiff to answer or give responsive answers to certain interrogatories listed hereafter, and for such other relief as the Court deems advisable, upon the following grounds:

1. That he has failed or refused to answer, within the period prescribed by the Rules, certain of the interrogatories submitted under R.R. 4:23, after proper service thereof on October 8, 1965.

2. That certain of such interrogatories were only partially answered, when returned to the attorneys for the defendants on January 31, 1966.

3. That he has failed to answer or give fully responsive answers to interrogatories Nos. 11, 13, 14, 15, 16, 18, 19, 20, 21, 22, 28, 29, 30, 32, 33, 34, 37, 38, 39, 41, 42, 44, 45, 46, 49, 50, 51, 52, 53, 58 (erroneously listed as 68 in the interrogatories), and 59 served upon him by the defendants, Congress of Racial Equality and James Farmer, pursuant to R.R. 4:23 on October 8, 1965.

Annexed to this motion is a copy of the interrogatories submitted and what plaintiff has submitted as purported answers thereto.

Dickinson R. Debevoise
Attorney for Defendants
Congress of Racial Equality
and James Farmer

Dated: February 2, 1966

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A-9503

HENRY MARTINEZ, Plaintiff, vs. CONGRESS OF RACIAL EQUALITY, a New York corporation, et al., Defendants.	)	Civil Action INTERROGATORIES PROPOUNDED BY CONGRESS OF RACIAL EQUALITY AND JAMES FARMER.

TO: FRIEDMAN & D'ALESSANDRO, ESQS.
Attorneys for Plaintiff
1180 Raymond Boulevard
Newark, New Jersey

SIRS:

PLEASE TAKE NOTICE that defendants, Congress of Racial Equality and James Farmer, require of the plaintiff, Henry Martinez, answers either under oath or under certification in lieu of oath to the following interrogatories in the above entitled matter within the time prescribed by law:

1. Referring to paragraph 6 of Count One of the Complaint, did James Farmer personally demand the suspension of plaintiff, and, if so, when, where and in what manner did he demand such suspension?

On information and belief at conferences by telephone with other defendants and on television program.

2. Referring to said paragraph 6, (a) did anyone acting on behalf of James Farmer demand the suspension of plaintiff and, if so, (b) what are the names and addresses of each person who acted on behalf of James Farmer and, (c) when, where and in what manner did each such person demand such suspensions?

a. Yes
b. Robert Curvin
   Fred Means
c. In office of Mayor on June 17, 1965, verbally demanded suspension and threatened unrest in city if not done.

did you?
✓

3. Referring to said paragraph 6, (a) did anyone acting on behalf of Congress of Racial Equality demand the suspension of plaintiff and, if so, (b) what are the names and addresses of the persons who so acted on behalf of Congress of Racial Equality.

Same as #2.

4. If the answer to Interrogatory 3(a) is in the affirmative, (a) when and where did each such person demand the suspension of plaintiff and (b) in what manner did each such person demand such suspension?

Same as #2.

5. What are the names and addresses of all persons who were a party to the alleged conspiracy referred to in paragraph 6 of Count One of the Complaint?

James Farmer, New York City
Robert Curvin
Fred Means, 118 Ridgewood Ave., Newark, N.J.
Andrew Washington, 38 Eckert Ave., Newark, N.J.
Boyd Cantrell, 66 Farley Ave., Newark, N.J.
Thomas Edwards, 313 Osborne Terrace, Newark, N.J.

6. What exactly did the persons referred to in the answer to Interrogatory No. 5 conspire or agree to do, giving complete details?

Agreed before hand and did demand suspension of Patrolman Martinez on June 17, 1965.

7. When, where and in exactly what manner did James Farmer conspire or agree with each one of the persons referred to in the answer to Interrogatory No. 5?

On information and belief by telephone conversation with the members of CORE listed.

8. When, where and in exactly what manner did each one of the other persons referred to in the answer to Interrogatory No. 5 enter into the alleged conspiracy or agree to enter into the alleged conspiracy?

See #7.

9. Specify every action, word or other deed of James Farmer done or spoken in the course of or in furtherance of the alleged conspiracy referred to in Paragraph 6 of Count One of the Complaint, and in addition give the date and place of each such actions, word or deed.

Text of television speech to be produced at latter date when obtained.

10. Specify every action, word or other deed of each one of the persons referred to in the answer to Interrogatory No. 5 done or spoken in the course of or in furtherance of such alleged conspiracy, and in addition give the date and place of each such action, word of deed.

Telephone conversation - conspiracy to be proven by facts elicited at trial from occurrence in Mayor's office.

11. Is there any written, taped, or recorded memorandum, recording or record of the June 17, 1965 meeting at the Office of the Mayor of the City of Newark referred to in Paragraph 6 of Count One of the Complaint, and, if so, what is the nature of each such memorandum, recording or record and where is it presently located?

This information within knowledge of Mayor and staff.

12. What are the names and addresses of each person known to plaintiff to have been present at such meeting?

Rev. Seymour Everett, Blessed Sacrament Church, Newark, N.J.
Director Domenic Spina, City Hall, Newark, N.J.
Norman Schiff, City Hall, Newark, N.J.
Mayor Hugh G. Addonizio, City Hall, Newark, New Jersey
Benjamin Epstein, unknown
Arnold Harris, 202 Grove St., Montclair, N.J.
Andrew Washington, 38 Eckert Ave., Newark, N.J.
Robert Curvin, 106 Huntington Terrace, Newark, N.J.
Boyd Cantrell, 66 Farley Ave., Newark, N.J.
Fred Means, 118 Ridgewood Ave., Newark, N.J.
Thomas Edwards, unknown

13. What was said by each defendant present at such meeting?

Will be developed at depositions of the respective parties.

14. What was said by each other person present at such meeting?

See #13.

15. Did any person tell or inform plaintiff what transpired at such meeting and, if so, what is the name and address of each person who so told or informed plaintiff and what exactly did each such person tell or inform plaintiff?

Improper

16. After such meeting, did plaintiff receive any written communication, notice or statement concerning the subject matter of the meeting or plaintiff's status on the police force, and, if so, what is the name and address of each person from whom plaintiff received each such communication, notice or statement and where is each such communication, notice or statement presently located? Attach a copy of each to the answers to these Interrogatories.

Official order - public record.

17. To what job was plaintiff assigned after said meeting?

Suspended, then assigned to desk duty.

18. Specify all changes which have taken place since the date of such meeting in plaintiff's pay, pension, vacation time, rank, job assignment and other terms and conditions of employment, giving in addition to the foregoing the date when each such change took place.

No pay, changes or pension, etc., desk duty, then returned to patrol in different precinct for 3 months, then returned to same assignment.

19. Specify in detail the nature and amount of each item of special damages which plaintiff and each member of his family has suffered as alleged in Paragraph 8 of Count One of the Complaint.

Dr. Jose da Silva - to be submitted
Drugs
Loss of weight
Mental anguish
life threatened, family threatened, put up to ridicule, family stability threatened.

20. What is the name and address of each person who acted as representative or agent of Congress of Racial Equality, in entering into or agreeing to or furthering the alleged conspiracy referred to in Paragraph 6 of Count One of the Complaint and when and in what manner did Congress of Racial Equality designate or constitute each such person as its representative or agent?

See previous answers

21. When, where and in exactly what manner did each person referred to in the answer to Interrogatory No. 20 conspire or agree to enter such alleged conspiracy?

See previous answers
Conspiracy to be proven by fact and circumstantial evidence.

22. Specify every action, word or other deeds of each person referred to in Interrogatory No. 20 done or spoken in the course of or in furtherance of said alleged conspiracy, and in addition give the date and place of each such action, word or deed.

See previous answers.

23. Referring to paragraph 2 of Count Six of the Complaint, what are the names and addresses of all persons who were a party to the alleged conspiracy.

Fred Means, Charles Tuller, M.L. Powell, Dorothy Jones, Robert Curvin, Andrew Washington and James Farmer.

24. What are the names and addresses of all agents, servants and employees of Congress of Racial Equality who acted on behalf of Congress of Racial Equality either in entering into such alleged conspiracy or in furthering it?

Same as #23.

25. What exactly did the persons referred to in the answers to Interrogatories Nos. 23 and 24 conspire or agree to do, giving complete details?

Agreed to print, publish and distribute document referred to in complaint.

26. When, where and in exactly what manner did James Farmer conspire or agree with each one of the persons referred to in the answers to Interrogatories Nos. 23 and 24?

In telephone communication or information and belief prior to the date set forth and subsequent to June 12, 1965.

27. When, where and in exactly what manner did each of the other persons referred to in the answers to Interrogatories Nos. 23 and 24 enter into the alleged conspiracy or agree to enter into the alleged conspiracy?

Same as #26 and to be developed on depositions - conspiracy to be proven by act and circumstantial evidence.

28. Specify every action, word or other deed of James Farmer done or spoken in the course of or in furtherance of the alleged conspiracy referred to in Paragraph 2 of Count Six of the Complaint, and in addition give the date and place of each such action, word or deed.

To be developed on depositions.

29. Specify every action, word or other deed of each one of the other persons referred to in the answers to Interrogatories Nos. 23 and 24 done or spoken in the course of or in furtherance of such alleged conspiracy, and in addition give the date and place of each such action, word or deed.

See previous answers and depositions.

30. What is the name and address of each person known to plaintiff who read the document a copy of which is marked "Exhibit A" to the Complaint?

Crowd at scene and police officers detailed to scene.

31. Is it plaintiff's contention that James Farmer saw or knew of the existence of the document (a copy of which is Exhibit A to the Complaint) prior to the date upon which he was served with the Complaint in this action?

Yes

32. If the answer to Interrogatory No. 31 is in the affirmative, (a) when and where did James Farmer see or learn of the existence of said document and (b) what is the name and address of each person who showed or sent him such document or informed him of its existence?

a. Head of organization and as such knew or sanctioned conduct of his officers and agents.

b. Unknown

33. What is the name and address of each agent, servant or employee of Congress of Racial Equality who saw or knew of the document (a copy of which is Exhibit A to the Complaint) prior to the date upon which James Farmer was served with the Complaint in this action and, in addition, (a) when and where did each such agent, servant or employee see or learn of the existence of such document, (b) what is the name and address of each person who showed or sent each such agent, servant or employee such document or informed him or its existence and (c) when and in what manner did Congress of Racial Equality designate or constitute each such alleged agent, servant or employee as an agent, servant or employee of Congress of Racial Equality?

a. Defendants listed in the suit who are members of CORE.
b. Within knowledge of defendants.
c. Official elections, advertised and published their position in newspapers and other means.

34. When and in what manner did Congress of Racial Equality designate (a) M.L. Powell, (b) Dorothy James, (c) Fred Means and (d) Robert Curvin its representatives to act on its behalf with rexpect to the document (a copy of which is attached to the Complaint as Exhibit A) or with respect to any other matter?

Document speaks for itself, M.L.Powell and Dorothy Jones distributed documents at meeting.

35. Referring to Paragraph 2 of Count Seven of the Complaint, what are the names and addresses of all persons who were a party to the alleged conspiracy?

Parties listed therein.

36. What are the names and addresses of all agents, servants and employees of Congress of Racial Equality who acted on behalf of Congress of Racial Equality either in entering into such alleged conspiracy or in furthering it?

Parties listed in complaint.

37. What exactly did the persons referred to in the answers to Interrogatories Nos. 35 and 36 conspire or agree to do, giving complete details?

Conspiracy to be proven by facts and circumstantial evidence.

38. When, where and in exactly what manner did James Farmer conspire or agree with each one of the persons referred to in the answers to Interrogatories Nos. 35 and 36?

To be developed on depositions - conspiracy to be proved from facts and circumstantial evidence.

39. When, where and in exactly what manner did each of the other persons referred to in the answers to Interrogatories Nos. 35 and 36 enter into the alleged conspiracy or agree to enter into the alleged conspiracy?

See previous answers.

40. Specify every action, word or other deed of James Farmer done or spoken in the course of or in furtherance of the alleged conspiracy referred to in Paragraph 2 of Count Seven of the Complaint, and, in addition, give the date and place of each such action, word or deed.

Television appearance, President, leader or head of organization - respondent superior will be developed on depositions and trial.

41. Specify every action, word or other deed of each one of the other persons referred to in the answers to Interrogatories Nos. 35 and 36 done or spoken in the course of or in furtherance of such alleged conspiracy, and, in addition, give the date and place of each such action, word or deed.

Facts to be developed from issuance of document.

42. What is the name and address of each person known to plaintiff who read the document a copy of which is marked "Exhibit B" to the Complaint?

Parties in crowd, Police Officers detailed to scene.

43. Is it plaintiff's contention that James Farmer saw or knew of the existence of the document (a copy of which is Exhibit B to the Complaint) prior to the date upon which he was served with the Complaint in this action?

Yes

44. If the answer to Interrogatory No. 43 is in the affirmative, (a) when and where did James Farmer see or learn of the existence of said document and (b) what is the name and address of each person who showed or sent him such document or informed him of its existence?

To be developed, head of organization knew or sanctioned issuance, respondent superior, to be developed at time of trial.

45. What is the name and address of each agent, servant or employee of Congress of Racial Equality who saw or knew of the document (a copy of which is Exhibit B to the Complaint) prior to the date upon which James Farmer was served with the Complaint in this action and, in addition, (a) when and where did each such agent, servant or employee see or learn of the existence of such document, (b) what was the name and address of each person who showed or sent each such agent, servant or employee such document or informed him of its existence and (c) when and in what manner did Congress of Racial Equality designate or constitute each such alleged agent, servant or employee as an agent, servant or employee of Congress of Racial Equality?

Parties listed in complaint.

a. To be developed at time of trial and depositions, document speaks for itself, distributed in presence of parties named in complaint.

b. Within knowledge of Defendant.

c. Between June 12, 1965 and July 15, 1965.

46. When and in what manner did Congress of Racial Equality designate (a) M.L. Powell, (b) Dorothy Jones, (c) Fred Means and (d) Robert Curvin its representative to act on its behalf with respect to the document (a copy of which is attached to the Complaint as Exhibit B) or with respect to any other matter.

a. Facts speaks for themselves and as well as document. On days referred to, parties distributed document.

47. What is the name of each member of plaintiff's family who has suffered special damages, and what is each such person's relationship to plaintiff?

Elizabeth Martinez - wife
Daniel Martinez - son
Carol Ann Martinez - daughter

48. As to each person named in answer to Interrogatory No. 47, what were the special damages suffered by him and itemize any and all losses or expenses incurred by him or her.

Suffered abuse, mental anguish, nervous conditions, treated by home remedies.

49. Give a detailed description of the nature, extent and duration of any and all injury to plaintiff's health.

50. Give a detailed description of any injury or condition claimed to be permanent together with all present complaints.

51. If plaintiff was confined to a hospital, state the name and address of the same, date of admission and discharge therefrom.

52. If plaintiff was treated by any doctors, state the name and present address of each doctor, the dates and places where treatments were received and the date of last treatment.

Dr. Jose da Silva, Westfield, New Jersey

53. If plaintiff is still being treated, give the name and address of each doctor rendering treatment, where and how often treatment is received and the nature thereof.

Dr. Jose da Silva, Westfield, New Jersey

54. If a previous injury, disease, illness or condition is claimed to have been aggravated, accelerated or exacerbated, specify in detail the nature of each and the name and present address of each doctor, if any, who rendered treatment for said condition.

None

55. Give (a) the positions plaintiff held on June 12, 1965 and the nature of the work performed, (b) his average weekly wages for the year preceding June 12, 1965, (c) the period of time he lost from his employment by reason of the things alleged in the Complaint.

a. Police officer, Newark Police Dept., patrol.

b. $134.00 per week

c. 5 days

56. If other loss of income, profit or earnings is claimed: (a) state the total amount of said loss (b) give a complete detailed computation of said loss and (c) state the nature and source of loss of such income, profit and earnings and the date of deprivation thereof.

a. None

57. If plaintiff is presently employed state: (a) name and address of present employer, (b) the position held and the nature of the work being performed and (c) present weekly wages, earnings, income or profit.

same as above.

68. Itemize in detail any and all moneys expended or expenses incurred for hospitals, doctors, nurses, x-rays, medicines, care and appliances and state the name and address of each payee and the amount paid or owed each payee.

59. Itemize any and all other losses or expenses incurred not otherwise set forth.

60. Set forth the names and addresses of all persons who have knowledge of any relevant facts relating to the case.

Parties to action, Director Spina, Rev. Seymour Everett and Ben Epstein.

61. State the names and addresses of any and all proposed expert witnesses.

Dr. Jose da Silva
Director Spina

By
DICKINSON R. DEBEVOISE
Attorney for Congress of
Racial Equality and James
Farmer

I certify that the foregoing statements made by me in the attached interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment for contempt of court.

By Henry Martinez
HENRY MARTINEZ

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A-9503

HENRY MARTINEZ, :

Plaintiff, :

vs. :

CONGRESS OF RACIAL EQUALITY, :
a New York corporation, et
al., :

Defendants. :

Civil Action

DEMAND FOR ADMISSIONS

TO: DICKINSON R. DEBEVOISE, ESQ.
744 Broad Street
Newark 2, New Jersey
Attorney for Defendants,
Congress of Racial Equality and James Farmer

SIR:

PLEASE TAKE NOTICE that the plaintiff, Henry Martinez, demands of the defendants, Congress of Racial Equality and James Farmer, answers under oath within 20 days from the date of service hereof to the following admissions:

1. The Congress of Racial Equality is incorporated in the State of New York.

Yes

2. James Farmer is the president or head of said organization. ~~Y~~ No – McKissick

3. The Congress of Racial Equality has affiliated with it Core Newark Essex Chapter, an unincorporated association.

4. Policy decisions regarding the operation of Core Newark Essex Chapter are determined by the parent organization.

No

5. James Farmer, subsequent to June 12, 1965 and prior to June 17, 1965, did appear on television and did make statements regarding Henry Martinez in an accident which occurred in Newark, New Jersey on June 12, 1965.

Farmer

Chch

6. Subsequent to June 12, 1965 and prior to June 17, 1965 James Farmer did speak with one of the following persons: Andrew Washington, Robert Curvin, Fred Means.

Farm

FRIEDMAN & D'ALESSANDRO
Attorneys for Plaintiff

By Edward G. D'Alessandro
Edward G. D'Alessandro
A Member of the Firm

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILFULLY FALSE, I AM SUBJECT TO PUNISHMENT FOR CONTEMPT OF COURT, AS PROVIDED BY R.R. 1:27F.

CONGRESS OF RACIAL EQUALITY

By ______________________________

____
JAMES FARMER

Jim
It is absolutely imperative that you answer Questions "5" and "6" ~~and give~~ on the aper and return to me. lso sign your name on the original

4085—NOTICE TO TAKE ORAL DEPOSITIONS (SPECIAL) ALL-STATE OFFICE SUPPLY CO.
49 EDISON PLACE, NEWARK 2, N. J.

HENRY MARTINEZ,

Plaintiff,

vs.

CONGRESS OF RACIAL EQUALITY,
a New York corporation, et al.,

Defendants.

ESSEX COUNTY COURT
LAW DIVISION
DOCKET No. A-9503

CIVIL ACTION

NOTICE TO TAKE ORAL DEPOSITIONS

TO: FRIEDMAN & D'ALESSANDRO, Esqs.
1180 Raymond Boulevard
Newark, New Jersey

SIRS :

PLEASE TAKE NOTICE, That in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before Kabot, Battaglia & Hammer, Notaries Public and Certified Shorthand Reporters of the State of New Jersey, or other person authorized by the laws of the State of New Jersey to administer oaths on May 17, *19*66, *at* ten *o'clock A.M. at the office of* Riker, Danzig, Scherer & Brown, Esqs., 744 Broad Street, Newark, New Jersey, *with respect to all matters relevant to the subject matter involved in this action, at which time and place you will please produce the following person whose testimony is to be taken.*

5/17
10

HENRY MARTINEZ

~~TAKE FURTHER NOTICE, that at the time and place aforesaid we shall also take deposition upon oral examination of the following persons:~~

Dated: April 27, 1966.

By Dickinson R. Debevoise
DICKINSON R. DEBEVOISE
Attorney for defendants, Congress
of Racial Equality and James Farmer

CC: *KABOT, BATTAGLIA & HAMMER*
24 Commerce Street
Newark 2, New Jersey
MArket 2-6644

HENRY MARTINEZ,
Plaintiff ,
vs.
CONGRESS OF RACIAL EQUALITY,
a New York Corporation, etals.,
Defendant s

ESSEX COUNTY COURT
LAW DIVISION
DOCKET No. A-9503

CIVIL ACTION

NOTICE TO TAKE ORAL DEPOSITIONS

TO: FRIEDMAN & D'ALESSANDRO, ESQS.
Attorneys for Plaintiff
1180 Raymond Boulevard
Newark, New Jersey

SIR :

PLEASE TAKE NOTICE, That in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before Kabot, Battaglia & Hammer, Notaries Public and Certified Shorthand Reporters of the State of New Jersey, or other person authorized by the laws of the State of New Jersey to administer oaths on May 17th *19* 66 *at* 10:00 *o'clock* A*M. at the office of* Riker, Danzig, Scherer & Brown, Esqs., 744 Broad Street, Newark, New Jersey, *with respect to all matters relevant to the subject matter involved in this action, at which time and place you will please produce the following person whose testimony is to be taken.*

HENRY MARTINEZ

~~*TAKE FURTHER NOTICE, that at the time and place aforesaid we shall also take deposition upon oral examination of the following persons:*~~

DEMAND is hereby made upon Plaintiff, Henry Martinez, to produce all records of income and copies of filed income tax reports for the years of 1963, 1964 and 1965; and all letters or notices of suspension from his employment as a police officer for the City of Newark, and all written evidence or documents evidencing loss of income during the year of 1965.

Dated: April 29, 1966

By CARL J. KADITUS
Attorney for Defendants, Core Newark
Essex Chapter, Fred Means and Robert
Curvin

CC: *KABOT, BATTAGLIA & HAMMER*
24 Commerce Street
Newark 2, New Jersey
MArket 2-6644

Served 5/5/66

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A 9503

HENRY MARTINEZ,	:	
Plaintiff,	:	Civil Action
vs.	:	DEMAND FOR ADMISSIONS
CONGRESS OF RACIAL EQUALITY, a New York corporation, et al.,	:	
Defendants.	:	

TO: DICKINSON R. DEBEVOISE, ESQ.
744 Broad Street
Newark 2, New Jersey
Attorney for Defendants,
Congress of Racial Equality and James Farmer

SIR:

PLEASE TAKE NOTICE that the plaintiff, Henry Martinez demands of the defendant, James Farmer, answers under oath within 20 days from the date of service hereof to the following admissions:

1. On June 21, 1965 on a television program presented on N B C James Farmer did make the following statements and did respond to the questions in the manner hereinafter set forth:

A. "I am distressed by an occurrence in Newark which is somewhat reminiscent of what happened last spring or early summer in New York City. There was a case of killing a young negro by a policeman of the City of Newark, June 12th at 2 a.m. Lester Long, Jr., 22 years old, was picked up for having a bad muffler and a bad headlight. He was driven away then returned to the scene and bolted from the car and was shot and killed by a patrolman. The policeman said it was an accident and he alleged that this young man, Long, assaulted somebody with a knife. Witnesses say and now the Mayor of Newark agrees it was a deliberate killing and that the policeman took aim and shot to kill. Under CORE pressure the Mayor of Newark has agreed to suspend the patrolman. Now we have demonstrations going on in Newark and they will continue. The policemen demonstrated against our demonstrations and against the suspension of the policeman on Friday, Saturday and Sunday and many of the policemen came from New York. I am prepared to go to Newark on a call from the CORE Chapter, and I will expect that call to come through in the course of this week; and I will go then and join in demonstrations in protests against this active police brutality and will urge the Newark Chapter of CORE to engage in a stepped-up campaign of political activity."

B. In response to question of Bob Teague:

Question: "Mr. Farmer, going back to the New Jersey situation, how can you be sure that this is a case of police brutality when the preliminary investigations indicate that the man was shot justifiably because he had nicked one of the patrolmen with a knife and then was trying to escape."

Response: "This was a preliminary investigation, I believe, and certainly not a departmental hearing or not a trial; and we have had much experience with preliminary investigations which generally exonerate or whitewash the case."

C. In response to question of a C B S reporter:

Question: "Mr. Farmer, there is also going to be a Grand Jury investigation. Are you setting yourself up as a jury prior to the Grand Jury investigation?

Response: "I am speaking on the basis of the evidence which we have in our hands from the CORE Chapter. Now, the Grand Jury, of course, will do what it sees fit according to the evidence which it presents; but I think that all citizens have a right to have an opinion about this situation."

D. In response to question of a C B S reporter:
Question: "Most negroes in this city tend to ignore the Grand Jury investigation when they say there was a case of police brutality here. Will you ignore the Grand Jury investigations over there if they say the policeman was not responsible."

Response: "In a democracy I don't think citizens are bound to agree with Grand Juries or any other kind of juries."

E. In response to question of C B S reporter:
Question: "But they are made up of citizens, Grand Juries, are they not?"

Response: "Yes, but they are not necessarily made up of representative citizens. We do not have to agree."

F. In response to question of Bob Teague:
Question: "Mr. Farmer, if the investigation proves that the patrolman, Mr. Martinez, did, in fact, shoot the man justifiably, will you make any effort to see that CORE and any other organizations cease and desist from threatening racial violence.

Response: "Well, CORE does not threaten racial violence. We have never threatened racial violence, never participated in racial violence."

G. In response to question of Bob Teague:

Question: "Every time a negro is killed by a white policeman, people yell police brutality and isn't it possible in some situations a negro can be committing an act in which killing may be justified in terms of the policeman's duty?"

Response: "This is of course conceivable that there may be a justifiable killing by a policeman but the facts in this case do not indicate that such was the case. Let me point out that the Mayor himself, the Mayor of Newark, has indicated that there was contradictory statements coming from the police department and he wants to find out why the police department contradicted themselves. At first, the police reported that the patrolman stumbled and fired his pistol accidentally. Subsequently, after CORE had protested the killing, then they came out with another version according to this paper, that Mr. Martinez, the policeman who shot Lester Long with one shot, alleged that Mr. Long slashed Mr. Martinez's partner with a knife and then fled. The police said that the slashing occurred while Mr. Long was being questioned in a patrol car about several motor vehicle violations. Now the Mayor has said that the contradictory reports were the key to the current protests and threatened demonstrations by the Congress of Racial Equality and he is right. We still call for an independent review board in major cities, in New York City, in Newark and this will be the focus of our activities of the situation in Newark."

H. In response to question of Bob Teague:

Question: "But, if the facts in the case as stated in the latest police reports are correct, that the suspect did, in fact, slash the patrolman and was killed in running away, would that be a case of justifiable homicide in your eyes?"

Response: "No, I think it would not. I think the slashing of a person is not grounds for the policeman serving as jury and executioner. I think a policeman who is trained in marksmanship should be able to shoot to stop, to shoot for the leg, that will drop them and hold them, and not shoot to kill."

FRIEDMAN & D'ALESSANDRO
Attorneys for Plaintiff

By S/ Edward G. D'Alessandro
Edward G. D'Alessandro
A Member of the Firm

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment for contempt of court, as provided by R.R. 1:27F.

JAMES FARMER

Obtain adjournment

June 10

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A-9503

HENRY MARTINEZ,

Plaintiff,

vs.

CONGRESS OF RACIAL EQUALITY,
a New York Corporation, et als.

Defendants.

Civil Action

NOTICE OF MOTION

TO: DICKINSON R. DEBEVOISE, ESQ.
Attorneys for Defendants,
Congress of Racial Equality
and James Farmer,
744 Broad Street
Newark, New Jersey 07102

SIR:

#164

June 10

PLEASE TAKE NOTICE that on Friday, May 27, 1966, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned, attorneys for plaintiff, Henry Martinez, will apply to the Essex County Court, Law Division, at the Court House, Newark, New Jersey, for an order permitting the plaintiff to take the depositions of the Custodian of Records of the National Broadcasting Company for purposes of transcribing the entire conversation of James Farmer in radio-television broadcast of June 21, 1965, or in the alternative, to permit the plaintiff to use, at the time of trial, a voice transcript or tape recording of the conversation of James Farmer in television appearance of June 21, 1965.

642-0240

FRIEDMAN & D'ALESSANDRO
Attorneys for Plaintiff

By ______________________
Edward G. D'Alessandro
A Member of the Firm

DATED: May 11, 1966.

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A 9503

HENRY MARTINEZ,)

Plaintiff,) Civil Action

vs.)

CONGRESS OF RACIAL EQUALITY,)
a New York corporation,
et al.,)

AFFIDAVIT

Defendants.)

)

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, JAMES FARMER, of full age, being duly sworn upon my oath according to law, depose and say:

1. I am one of the defendants in the above entitled action and have read the Demand for Admissions served upon my attorney.

2. The statements in paragraphs
are untrue, and, therefore, I specifically deny each of them.

3. The statements in paragraphs
are true.

Subscribed and sworn to)
before me this day)
of May, 1966.)

James Farmer

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A-9503

HENRY MARTINEZ,

Plaintiff,

-vs-

CONGRESS OF RACIAL EQUALTIY, a New York corporation, CORE NEWARK ESSEX CHAPTER, an unincorporated body, JAMES FARMER, ANDREW WASHINGTON, ROBERT CURVIN, FRED MEANS, BOYD CANTRELL, ARNOLD HARRIS, THOMAS EDWARDS, CHARLES A. TULLER, DOROTHY JONES and M. L. POWELL,

Civil Action

SUBSTITUTION OF ATTORNEY

The undersigned hereby consents to the substitution of ARNOLD K. MYTELKA, ESQ., of 744 Broad Street, Newark, New Jersey as attorney for the defendants, CORE NEWARK ESSEX CHAPTER, an unincorporated body, ANDREW WASHINGTON, ROBERT CURVIN, FRED MEANS and CHARLES A. TULLER in the above entitled cause.

CARL J. KADITUS
Attorney for Defendants, Core Newark Essex Chapter, Andrew Washington, Robert Curvin, Fred Means and Charles A. Tuller

DATED: July 25, 1966

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A-9503

HENRY MARTINEZ, Plaintiff, vs. CONGRESS OF RACIAL EQUALITY, a New York corporation, et al., Defendants.	)	Civil Action ORDER AS TO TRANSCRIPTION OF DEPOSITION

This matter being opened to the Court by Friedman & D'Alessandro, Esqs., attorneys for plaintiff, upon plaintiff's motion for an order physically deleting and striking any and all testimony of The Reverend Seymour B. Everett given on deposition on October 7, 1966, and for an order that the notes of the stenographer be physically destroyed and expunged, as well as any and all notes of the attorneys present and for an order restraining any and all attorneys present from using said testimony or repeating the same; and this matter also being opened to the Court by Dickinson R. Debevoise, Esq., attorney for defendants, Congress of Racial Equality and James Farmer, for an order continuing plaintiff's motion with respect to the deposition of The Reverend Seymour B. Everett until such time as said deposition may be transcribed and presented to the Court and made available to the attorneys for the various defendants herein, subject to such protective orders as the Court may deem appropriate; and the Court having limited the argument of counsel initially to the question whether the Court had the authority and/or power and/or jurisdiction to stay the transcript of said depositions; and the Court having heard the matter argued by Friedman & D'Alessandro, Esqs. (Edward G. D'Alessandro, Esq., and Nicholas Scalera, Esq., appearing), Dickinson R. Debevoise, Esq., Clapp & Eisenberg, Esqs. (Arnold K. Mytelka, Esq., appearing), attorneys for defendants Newark-Essex CORE, Fred Means, Robert Curvin, Andrew Washington and Charles A. Tuller, Frohling & Gaulkin, Esqs., (Geoffrey Gaulkin, Esq., appearing), attorneys for defendant, Arnold Harris, Thomas L. Parsonnet, Esq. (Victor Parsonnet, Esq., appearing), attorney for defendant, Thomas Edwards, and Frederick J. Gassert, Esq. (Thomas Gassert, Esq., appearing) attorney for The Reverend Seymour B. Everett; and the Court having considered the arguments and briefs of counsel, and for good cause shown;

IT IS, on this 29th day of November ~~December,~~ 1966, ORDERED as follows:

1. Robert Meeks, the stenographic reporter at the deposition of The Reverend Seymour B. Everett held on October 7, 1966, at the offices of Friedman & D'Alessandro, and Kabot, Battaglia and Hammer, the employer of said Robert Meeks, shall prepare one copy of the testimony of The Reverend Seymour B. Everett, which copy shall be placed under seal and within one week of the receipt by them of a copy of this order delivered to this Court by

delivering said copy personally to the Honorable Lawrence A. Whipple.

2. Said Robert Meeks and Kabot, Battaglia and Hammer shall not, until further order of this Court, make more than one copy of said transcript or divulge the contents thereof to any person.

3. Until further order of this Court, the parties to this action, their attorneys, The Reverend Seymour B. Everett and his attorney and their designated representatives shall hold in confidence and disclose to no one any portion of the conversations or testimony at the above mentioned deposition, whether or not encompassed in the transcript.

4. The attorneys appearing before the Court in this cause may, upon appointment, inspect the contents of the above mentioned transcript in this Court, provided that said transcript may not be removed from the Court.

5. Until further order of the Court, all other relief sought with respect to the aforementioned deposition be, and the same hereby is, denied.

6. This Order shall not be dispositive of any other motion pending in this cause.

/s/ Lawrence A. Whipple
J.S.C.

Consented to as to form:

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Attorneys for Plaintiff

By
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By__________________________
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Chapter, Fred Means, Robert
Curvin, Andrew Washington and
Charles A. Tuller

By Arnold K Mytelka
Arnold K. Mytelka

____
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____
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____
Frederick J. Gassert
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Seymour B. Everett

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A 9503

HENRY MARTINEZ,)
Plaintiff,)
vs.)
CONGRESS OF RACIAL EQUALITY)
a New York corporation,
et al.,)
Defendants)

Civil Action

SUPPLEMENTAL ANSWER TO INTERROGATORY

9. State whether or not James Farmer conferred with any of the defendants named in the Complaint prior to June 17, 1965. If so, set forth the nature of said conference, what was said and the persons present.

Ans. Defendant, James Farmer, did not confer with any of the defendants named in the complaint between June 12, 1965 and June 17, 1965, both dates inclusive.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment for contempt of court, as provided by R.R. 1:27F.

James Farmer
James Farmer

CONGRESS OF RACIAL EQUALITY

By Carl Rachlin

20 - N. J. SUMMONS
(AMENDED 9-53)

ALL-STATE OFFICE SUPPLY CO.
502 HIGH ST., NEWARK 2, N. J.

HENRY MARTINEZ,

Plaintiff ,

vs.

CONGRESS OF RACIAL EQUALITY, et al

Defendant .

ESSEX County Court

LAW Division

Docket No.

CIVIL ACTION

SUMMONS

The State of New Jersey
to

L. S. ROBERT CURVIN, 106 Huntington Terrace, Newark, New Jersey
CHARLES A. TULLER, 291 Park Avenue, Nutley, New Jersey

You are Hereby Summoned *in a Civil Action in the* Essex *County Court of New Jersey, instituted by* Henry Martinez *plaintiff , and required to serve upon* Friedman & D'Alessandro, Esqs. 1180 Raymond Boulevard, Newark, New Jersey *attorney*s *for the plaintiff , an answer to the complaint, a copy of which is herewith served upon you, within 20 days after the service of the summons upon you, exclusive of the day of service. If you fail to do so, judgment by default may be rendered against you for the relief demanded in the complaint. You shall file your original answer and proof of service with the Clerk of the* Essex *County Court, at* Court House, Newark, New Jersey [illegible] *in accordance with the rules of civil practice and procedure.*

Dated ____________________

NICHOLAS V. CAPUTO
Clerk of the Essex *County Court*

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO.

HENRY MARTINEZ,

Plaintiff,

vs.

CONGRESS OF RACIAL EQUALITY, a New York corporation, CORE NEWARK ESSEX CHAPTER, an unincorporated body, JAMES FARMER, ANDREW WASHINGTON, ROBERT CURVIN, FRED MEANS, BOYD CANTRELL, ARNOLD HARRIS, THOMAS EDWARDS, CHARLES A. TULLER, DOROTHY JONES and M.L. POWELL,

Defendants.

Civil Action

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Henry Martinez, residing at 13 Niagra Street Newark, New Jersey, by way of Complaint against the defendants, says:

COUNT ONE

1. At all times mentioned herein the plaintiff was married and has a family.

2. On June 17, 1960 the plaintiff, Henry Martinez, was appointed as a police officer of the City of Newark, County of Essex and State of New Jersey and continued in said position up until the filing of this Complaint.

3. Prior to June 12, 1965 and continuing thereafter the plaintiff, Henry Martinez, served honorably as a police officer and did receive a number of commendations for his work as a police officer often far beyond the realm of duty in his attempts to protect the law abiding citizenry of the City of Newark.

4. On June 12, 1965 Patrolman Henry Martinez in the performance of his duties as a police officer and in his attempts to protect the law abiding citizens of the City of Newark was involved in an incident which eventually caused the decease of one Lester Long, a criminal of long standing.

5. Subsequent thereto and uninterrupted the patrolman continued in his occupation as a police officer up and until June 18, 1965.

6. On June 17, 1965 at the office of the Mayor of the City of Newark, Hugh J. Addonizio, the defendant, Congress of Racial Equality, a New York corporation, at the special insistence of the defendants, James Farmer, Robert Curvin and Fred Means, acting in their representative capacities for the Congress of Racial Equality did singularly and individually and together with the defendants, Andrew Washington, Boyd Cantrell, Arnold Harris, Thomas Edwards, in accordance with a prearranged conspiracy, did maliciously and illegally demand the suspension of Henry Martinez, a patrolman for the City of Newark.

7. As a direct and proximate result of the malicious interference with the economic opportunity of Patrolman Martinez by the joint and singular conduct of the respective defendants, the defendant corporation and the unincorporated body, by their representatives, the plaintiff, Henry Martinez, was wrongfully suspended from his position as patrolman for the City of Newark on June 18, 1965.

8. As a result the plaintiff, Henry Martinez, was deprived of his position as patrolman for the City of Newark as aforesaid, his reputation has been and will be injured due to the great deal of publicity attached to his illegal suspension, he has suffered and will suffer mental anguish requiring medical attention, he and his family have suffered special damages and his position in the community has been seriously damaged.

WHEREFORE, plaintiff, Henry Martinez, demands judgment against the defendants, jointly and severally, for compensatory damages and against each defendant for punitive damages.

COUNT TWO

1. Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of Count One

are repeated herein as though they were made a part hereof.

2. The conduct of the respective defendants in furtherance of the conspiracy entered into with and among one another and their statements and conduct singularly were wilfull, malicious and reckless and were with actual malice to injure the plaintiff and his reputation.

WHEREFORE, plaintiff, Henry Martinez, demands judgment against the defendants, individually, jointly and severally, for compensatory and punitive damages.

COUNT THREE

1. Paragraphs 1, 2, 3, 4 and 5 of Count One are repeated herein as though they were made a part hereof.

2. On June 16, 1965 at the corner of Oriental Street and Broadway in the City of Newark, County of Essex and State of New Jersey and in the presence and hearing of a number of people the defendant, Charles A. Tuller, did maliciously speak the following false and defamatory words of and concerning the plaintiff, Henry Martinez, to wit: "Henry Martinez is a murderer."

3. The defendant, Charles A. Tuller, in making said communication did intend it to mean that Henry Martinez had committed an illegal act and did mean it to cause the persons hearing same to react unfavorably toward the plaintiff. The persons to whom said defamatory matter was communicated as aforesaid understood said words to have said meaning.

4. The said defamatory matter communicated as aforesaid did and was calculated to cause great injury to plaintiff's reputation in that his position as a police officer was placed in jeopardy.

5. At the time of said defamatory publication this defendant knew that said words were not true. In making said defamatory remarks the defendant acted with malice toward plaintiff.

6. The plaintiff has always enjoyed a good reputation for honesty, law abiding police officer and a good substantial police officer.

7. As a result of the defamatory remarks of this defendant the plaintiff's position in the police department was put in jeopardy, the plaintiff's reputation was seriously damaged, the plaintiff's physical being was damaged as a result of the mental anguish attached to same and the plaintiff was caused to seek medical attention.

WHEREFORE, plaintiff, Henry Martinez, demands judgment against the defendant, Charles A. Tuller, for damages compensatory and punitive on this Count.

COUNT FOUR

1. Paragraphs 1, 2, 3, 4 and 5 of Count One are repeated herein as though they were made a part hereof.

2. On June 16, 1965 at the corner of Oriental Street and Broadway in the City of Newark, County of Essex and State of New Jersey and in the presence and hearing of a number of people the defendant, Robert Curvin, did maliciously speak the following false and defamatory words of and concerning the plaintiff, Henry Martinez, to wit: "Henry Martinez is a murderer."

3. The defendant, Robert Curvin, in making said communication did intend it to mean that Henry Martinez had committed an illegal act and did mean it to cause the persons hearing same to react unfavorably toward the plaintiff. The persons to whom said defamatory matter was communicated as aforesaid understood said words to have said meaning.

4. The said defamatory matter communicated as aforesaid did and was calculated to cause great injury to plaintiff's reputation in that his position as a police officer was placed in jeopardy.

5. At the time of said defamatory publication this

defendant knew that said words were not true. In making said defamatory remarks the defendant acted with malice toward plaintiff.

6. The plaintiff has always enjoyed a good reputation for honesty, law abiding police officer and a good substantial police officer.

7. As a result of the defamatory remarks of this defendant the plaintiff's position in the police department was put in jeopardy, the plaintiff's reputation was seriously damaged, the plaintiff's physical being was damaged as a result of the mental anguish attached to same and the plaintiff was caused to seek medical attention.

WHEREFORE, plaintiff, Henry Martinez, demands judgment against the defendant, Robert Curvin, for damages compensatory and punitive on this Count.

COUNT FIVE

1. Paragraphs 1, 2, 3, 4 and 5 of Count One are repeated herein as though they were made a part hereof.

2. On June 16, 1965 at the corner of Oriental Street and Broadway in the City of Newark, County of Essex and State of New Jersey and in the presence and hearing of a number of people the defendant, Fred Means, did maliciously speak the following false and defamatory words of and concerning the plaintiff, Henry Martinez, to wit: "Henry Martinez is a murderer."

3. The defendant, Fred Means, in making said communication did intend it to mean that Henry Martinez had committed an illegal act and did mean it to cause the persons hearing same to react unfavorably toward the plaintiff. The persons to whom said defamatory matter was communicated as aforesaid understood said words to have said meaning.

4. The said defamatory matter communicated as aforesaid did and was calculated to cause great injury to plaintiff's

reputation in that his position as a police officer was placed in jeopardy.

5. At the time of said defamatory publication this defendant knew that said words were not true. In making said defamatory remarks the defendant acted with malice toward plaintiff.

6. The plaintiff has always enjoyed a good reputation for honesty, law abiding police officer and a good substantial police officer.

7. As a result of the defamatory remarks of this defendant the plaintiff's position in the police department was put in jeopardy, the plaintiff's reputation was seriously damaged the plaintiff's physical being was damaged as a result of the mental anguish attached to same and the plaintiff was caused to seek medical attention.

WHEREFORE, plaintiff, Henry Martinez, demands judgment against the defendant, Fred Means, for damages compensatory and punitive on this Count.

COUNT SIX

1. Paragraphs 1, 2, 3, 4, and 5 of Count One are repeated herein as though they were made a part hereof.

2. Prior to June 16, 1965 the defendant, Congress of Racial Equality, a New York corporation, by its agents, servants or employees, and the defendant, Core Newark Essex Chapter, an unincorporated body, by its members, and the defendants, Fred Means, Robert Curvin and James Farmer, did conspire and did agree to publish a document, a copy of which is attached hereto and marked "Exhibit A." Said document contained the following false and defamatory matter in reference to the plaintiff, Henry Martinez: "Our neighbor, Lester Long, Jr., was murdered by a policeman last Friday night on the corner of Oriental and Broadway." This defamatory matter in accordance with the conspiracy entered

into amongst the defendants was delivered by the defendants, M. L. Powell, Dorothy Jones, Fred Means and Robert Curvin, in their individual capacity and in their capacity as representatives of the defendant corporation and the defendant unincorporated body. Pursuant to the defendants' malicious intent said writing was read by a number of people at the corner of Oriental and Broadway and prior to that particular time by numerous persons in the City of Newark.

3. The defendants in conspiring to make said communications and in fact in making said communications did intend it to mean that the plaintiff, Henry Martinez, did commit an illegal act. The said persons to whom said defamatory matter was communicated as aforesaid understood said words to have said meaning.

4. The said defamatory matter communicated as aforesaid was calculated and did cause great injury to the plaintiff's reputation in that his position as a police officer was put in jeopardy.

5. At the time of said defamatory publications the defendant knew that said words were untrue and that in making said defamatory publication the defendants acted with malice toward the plaintiff.

6. The plaintiff has always enjoyed a good reputation for truth, veracity, being a law abiding citizen and a dutiful law abiding police officer.

7. As a result of the defendants' conduct, jointly and singularly, the reputation of the plaintiff was seriously damaged, the health of the plaintiff was effected, the plaintiff suffered great mental anguish requiring medical attention and his position in the police department was put in jeopardy.

WHEREFORE, plaintiff, Henry Martinez, demands judgment against each of the defendants, jointly and severally, for compensatory and punitive damages.

COUNT SEVEN

1. Paragraphs 1, 2, 3, 4 and 5 of Count One are repeated herein as though they were made a part hereof.

2. Prior to June 23, 1965 the defendant, Congress of Racial Equality, a New York corporation, by its agents, servants or employees, and the defendant, Core Newark Essex Chapter, an unincorporated body, by its members, and the defendants, Fred Means, Robert Curvin and James Farmer, did conspire and did agree to publish a document, a copy of which is attached hereto and marked "Exhibit B." Said document contained the following false and defamatory matter in reference to the plaintiff, Henry Martinez: "POLICE BRUTALITY. A man was short in the back of the head by a policeman last week in North Newark. This could happen to you.--The cops say it was justified. We say it wasn't!" This defamatory matter in accordance with the conspiracy entered into amongst the defendants was delivered by the defendants, M. L. Powell, Dorothy Jones, Fred Means and Robert Curvin, in their individual capacity and in their capacity as representatives of the defendant corporation and the defendant unincorporated body. Pursuant to the defendants' malicious intent said writing was read by a number of people at the corner of Oriental and Broadway and prior to that particular time by numerous persons in the City of Newark.

3. The defendants in conspiring to make said communications and in fact in making said communications did intend it to mean that the plaintiff, Henry Martinez, did commit an illegal act. The said persons to whom said defamatory matter was communicated as aforesaid understood said words to have said meaning.

4. The said defamatory matter communicated as aforesaid was calculated and did cause great injury to the plaintiff's reputation in that his position as a police officer was put in

jeopardy.

5. At the time of said defamatory publications the defendant knew that said words were untrue and that in making said defamatory publication the defendants acted with malice toward the plaintiff.

6. The plaintiff has always enjoyed a good reputation for truth veracity, being a law abiding citizen and a dutiful law abiding police officer.

7. As a result of the defendants' conduct, jointly and singularly, the reputation of the plaintiff was seriously damaged, the health of the plaintiff was effected, the plaintiff suffered great mental anguish requiring medical attention and his position in the police department was put in jeopardy.

WHEREFORE, plaintiff, Henry Martinez, demands judgment against each of the defendants, jointly and severally, for compensatory and punitive damages.

FRIEDMAN & D'ALESSANDRO
Attorneys for Plaintiff

By Edward G. D'Alessandro
Edward G. D'Alessandro
A Member of the Firm

Plaintiff demands a jury trial on all issues.

EXHIBIT A

STOP POLICE BRUTALITY

OUR NEIGHBOR, LESTER LONG JR, WAS MURDERED BY A POLICEMAN LAST FRIDAY NIGHT ON THE CORNER OF ORIENTAL AND BROADWAY. HE WAS SHOT IN THE BACK OF THE HEAD.

JOIN WITH THE CONGRESS OF RACIAL EQUALITY-CORE- IN A RALLY TO PEACEFULLY PROTEST THIS KILLING.

WEDNESDAY
JUNE 16 7 PM
ORIENTAL AND BROADWAY

NEWARK-ESSEX C.O.R.E.

EXHIBIT B

STOP POLICE BRUTALITY

A MAN WAS SHOT IN THE BACK OF THE HEAD BY A POLICEMAN LAST WEEK IN NORTH NEWARK. THIS COULD HAPPEN TO YOU. - THE COPS SAY IT WAS JUSTIFIED. WE SAY IT WASN'T!

RALLY : WEDNESDAY
JUNE 23 7:00PM.
CORNER
CLINTON AVE - BERGEN ST.

NEWARK-ESSEX C.O.R.E.

MEMORANDUM ON MARTINEZ V. C.O.R.E. ET AL.

Robert Walker
Steven Roth
Paul Paksarian
Roger Lowenstein

1. IS MARTINEZ A PUBLIC OFFICIAL WITHIN THE NEW YORK TIMES RULE?

In the few instances since the Times v. Sullivan decision in which the concept "public official" has been tested, a broadening trend has emerged which includes in the public official category such individuals as a candidate for Congress (Bingham v. Buckley, N. Y. Law Journal, Aug. 4, 1964), a law partner of the mayor, a candidate, (Gilberg v. Goffi, 21 A.D 2d 517, 251 N.Y.S. 2d 823), and most important, a policeman in the center of public controversy (Gilligan v. King, 264 NYS 2d 309). The expansion of the Times v. Sullivan doctrine had been predicted in dicta by Judge Friendly of the 2nd Circuit:

> Although the public official is the strongest case for the constitutional compulsion of such a privilege, it is questionable whether in principle the decision can be so limited. A candidate for public office would seem an inevitable candidate for extension... Once that extension was made the participant in public debate on an issue of grave public concern would be next in line... (Linus Pauling v. News Syndicate Co., USCA 2d Circuit, 335 F 2d 659,671)

The opinion in the Gilligan case echoes this impulse towards expansion:

> ...the title of the office and the function it normally serves are not the only criteria for the determination of the extent of the qualified privilege. The relation of the alleged libel to his 'official conduct,' and the public interest or concern in the publication, are matters upon which the Court has placed great emphasis.

The criteria of the qualified privilege relied upon in Gilligan seem to be these:

1. Gilligan, as a policeman on the municipal payroll, was "in a strictly literal sense the occupant of a Governmental position," and thus a public official of a minor nature.

2. The rationale of the Times opinion was that the privilege would be extended to a debate on "public issues," designed to bring about "political and social changes desired by the people."

The Court seems to place great emphasis, in weighing the latter consideration, upon the status of the participants in the public debate. Martin Luther King and the other defendants, like C.O.R.E. in the Martinez case, is not merely a private citizen but a qualified and concerned spokesman, vitally involved in controversies concerning alleged police brutality and police review boards. This is perhaps exactly the kind of "uninhibited robust and wide-open " debate on public issues which the new constitutional definition of libel, commanded by the first amendment and applied to the States through the fourteenth, was designed to protect. (See cases cited in Gilligan.)

2. SHOULD THE TIMES STANDARD FOR DETERMINING MALICE BE CONTROLLING?

If the Times v. Sullivan doctrine can be viewed as controlling in regard to the extent of the pivilege, a strong argument can be made, I feel, for utilizing the Court's concept of malice as negativing the privilege. The Times case can be viewed as redefining the constitutional definition of libel, and since the concept "malice" is a vague and imprecise one, (see concurring opinions in Times) it would seem incumbent on the courts which follow the Times doctrine to employ the Court's concept of malice as well. In applying the Times rule, Justice Brennan stated:

> The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not. (pp. 279-280,84 S.Ct. p. 726)

This definition was reiterated by Brennan in an article in 79 Harvard Law Rev. 1:18.

At this point the issue becomes an issue of fact. I think the charge of knowledge of falsity cannot be supported, as the alleged defamation occurred prior to the Grand Jury hearing. Was C.O.R.E. reckless? (Much depends here on facts which I don't have -- what was the full extent of C.O.R.E.'s investigation, interrogation of witnesses, etc.) It seems reasonable to believe in light of the facts that Martinez had acted with such recklessness as to be criminally liable.

A possible argument: Much of the strength of the "malice" allegations can be removed if the C.O.R.E. statements can be viewed as aimed not only at Martinez personally, but at Martinez as the symbol of police mis-use of official power. See Exhibit E. It is significant that what C.O.R.E. did was not to try immediately for a Grand Jury indictment and public prosecution of Martinez, but rather to have Martinez transferred from his job, and as a result bring pressure on the City to establish a civilian review board. (This is all part of a broader social program in which Martinez plays a role.) It is clear that the term "murder" was not being used so much in its strict legal sense, but rather in its more general use as a rough equivalent of "kill." In fact, these two words are used interchangeably in exhibit A. Thus the gist of the defamation was that C.O.R.E accused Martinez of being a trigger-happy cop who should be kicked off the force for acting outside the boundaries of care or restraint which are imposed on every policeman. The ambiguity in the word "murder," though not negativing the defamatory quality of the act, since a certain per-centage of the population could take the word in its full legal sense, does, however, go a long way in negativing the malice of the alleged libel, measured much more subjectively than the defamation itself. It is uncontroverted that Martinez killed Lester Long, and with enough apparent lack of justification to warrant a Grand Jury hearing.

3. MALICE -- JUDGE OR JURY?

As was the case with the issues of "public official" and "actual malice," the state policy on the allocation of factual determination between judge and jury has been pre-empted by the

Sullivan case, at least insofar as the final outcome is concerned. This federal review power in reserve was just the procedure followed by the Court in Sullivan and was described by Mr. Justice Brennan as follows:

> This Court's duty is not limited to the elaboration of constitutional principles; we must also in proper cases review the evidence to make certain that those principles have been constitutionally applied. ... the rule is that we 'examine for ourselves the statements in issue and the circumstances under which they were made to see... whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect.'

This is to say that the findings with regard to malice and the loss of the qualified privilege must satisfy not only federal standards but, potentially, a federal court as well.

Before considering the New Jersey standards for resolving the judge-jury allocation problem in libel actions, passing mention of a provision in Art. I, par. 6 of the state Constitution must be made. The relevant part reads:

> ...In all prosecutions or indictments for libel... the jury shall have the right to determine the law and the fact.

In Leers v. Green, 24 N.J. 239,256, 131 A.2d. 781 (1957), the Supreme Court, through Mr. Justice Heher, rejected an argument that would have applied the above provision to civil actions for libel and would have made the summary judgment powers of R.R. 4:58 inapplicable. Construing the passage as enabling the jury to reach general verdicts rather than special verdicts, the court affirmed the granting of summary judgment for the defendant as follows:

> Certainly, it was not designed by this constitutional precept to deprive the court of the power in essence judicial to terminate the proceeding where in any reasonable view of the evidence, the charge of libel has not been sustained.

A review of recent New Jersey defamation cases involving qualified privilege and the issue of "express malice" will yield, at best, a picture of one standard of allocation rejected (the so-called "scintilla rule") and of many verbalizations of another, less clearly defined standard. The limited usefulness of such a review results largely from two factors. First, in those cases most closely resembling the instant case, those of "fair comment on matters materially affecting the public interest," the courts were as much concerned with distinguishing fact from comment (a process made irrelevant by Sullivan which covers factual statements) as they were with enunciating a standard of malice. Even on the malice issue, the "primary purpose" test was used in conjunction with a "bona fide" test that incorporated the belief plus "reasonable grounds for belief" standards of sections 600 and 601 of the Restatement of Torts. This negligence standard was explicitly rejected in Sullivan. It is more than likely that the primary purpose test, which apparently looks to motive, is similarly improper in dealing with constitutionally protected communications involving public officials. The presence of this welter of other issues, added to the absence of square confrontation with the adequacy of the trial court's exercise of its discretion, is most clearly reflected in Mr. Justice Heher's opinion in Coleman v. Newark Morning Ledger Co., 29 N.J. 357, 149 A.2d 193 (1959). The privilege issue there involved legislative proceedings, specifically, remarks made by Senator Mc Carthy after an executive session inquiry into the security risk status of plaintiff, a physicist at Fort Monmouth. The trial court found the communications to newsmen after the hearing qualifiedly privileged and the jury, under an "honest belief" instruction, found no abuse of this privilege by defendant newspaper. Incidentally, it appears that Senator Mc Carthy was a witness for the defense in this trial; the impact of his presence on the "honest belief" determination was not considered.

Leers v. Green, supra, involved the summary judgment power discussed above. After resolving the constitutional issue, the court affirmed the entry of summary judgment under the standard found in R.R. 4:58:

> The judgment or order sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show palpably that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. (emphasis added)

Second, those cases involving only express malice and the abuse of more individualized qualified privileges saw malice defined in negligence terms, as noted above. This standard would, most likely, make for closer determinations than would the actual knowledge or reckless disregard of truth standard required by Sullivan. Accordingly, the usefulness of verbal formulae from these cases is somewhat limited, once the "scintilla" basis for reserving factual determinations for the jury is rejected.

Whether the courts have applied a different standard in summary judgment situations than in directed verdict ones is another question made difficult by the absence of clear judicial confrontation of the problem. Dealing with a summary judgment problem under Rule 56 of the F.R.C.P. (which is worded exactly like the New Jersey rule), Judge Learned Hand, in Dyer v. MacDougall, 201 F.2d 265 (Second Circ. 1952) approached the"genuine issue" problem as he would one for a directed verdict.

> The question is whether, in view of the defendants' affidavits and Mrs. Hope's deposition, there was any 'genuine issue' under Rule 56(c) as to the utterance of the slanders. The defendants had the burden of proving that there was no such issue; on the other hand, at a trial the plaintiff would have the burden of proving the utterances; and therefore, if the defendants on the motion succeeded in proving that the plaintiff would not have enough evidence to go to the jury on the issue, the judgment was right.

One looks in vain for such a juxtaposition of standards in the New Jersey cases. However, if similarity of language in the two kinds of cases is reliable, it seems that similar discretion is afforded state judges in both situations. As to what the exact limits of this discretion to terminate the proceedings are this writer finds it hard to say. Perhaps the best that can be done is to quote from two opinions, one involving a properly granted summary judgment motion and the other an improperly withheld directed verdict motion.

The summary judgment case is Sokolay v. Edlin, 65 N.J. Super. 112, 167 A.2d 211, 220 (1961). Judge Collester, on temporary assignment, there stated:

> The scintilla rule does not apply in New Jersey. ...If the facts are of an insubstantial nature, a mere scintilla, 'fanciful, frivolous, gauzy or merely suspicious', summary judgment may be entered against the plaintiff.

In Jorgensen v. Pennsylvania R.R. Co., 25 N.J. 541, 138 A.2d 24 (1958), the Supreme Court, speaking through Mr. Justice Proctor, reversed a jury determination on an abuse of privilege by express malice question. The court's view of the evidence led to the conclusion that there was no ground for a conclusion of an absence of good faith and that the issue should not have gone to the jury.

> Where the case is clearly or admittedly one of qualified privilege, and there is no evidence, or not more than a scintilla of evidence, of malice, it is the duty of the trial judge to withdraw that issue from the consideration of the jury.

4. DO CITIZENS OR CITIZENS' ORGANIZATIONS ENJOY AN ABSOLUTE OR QUALIFIED PRIVILEGE TO URGE THE SUSPENSION OF A POLICE OFFICER WITHOUT REGARD TO WHETHER THE MAYOR WHO SUSPENDED SAID POLICE OFFICER HAD THE LEGAL POWER TO DO SO?

In order for the plaintiff to recover in his action for interference with economic opportunity it will be necessary for him to prove that the defendants acted maliciously. There is , however, some difference of opinion both in New Jersey and in other jurisdictions as to the meaning of the epithet "malice" in this context. Many of the older cases, and a few of the more recent ones, reflect the attitude that malicious interference with a contractual or employment relationship is roughly comparable to acting with an intent to harm the plaintiff or to deprive him of the benefits of his contract or employment.

But it is obvious that this definition of malice is not helpful, since any non-negligent interference with an economic opportunity will be malicious in the sense that the defendant intends to deprive the plaintiff of some economic benefit. So the modern text and dictionary writers agree that "Malice in this connection is not to be understood in its popular sense of ill will against a person, but in its legal sense as characterizing an unlawful act, done intentionally without just cause or excuse." 86 C.J.S. 957. And it is now declared to be the law of New Jersey that:

> Malice in the legal sense is the intentional doing of a wrongful act without justification or excuse. And a 'wrongful act' is any act which in the ordinary course of business will infringe upon the rights of another to his damage, except it be done in the exercize of an equal or superior right. Schlesinger Co. v. Rice, 4 N.J. 169, 181, 72 A.2d 869 (1950) (dictum)

For Martinez to prove malice it therefore will be necessary for him to show that the interest which the defendants were seeking to advance in demanding his suspension are deserving of a lesser degree of protection than his own interest in remaining immune to suspension under the circumstances of this case. An integral part of this "weighing of objectives" formula is the manner in which the defendants sought to bring about the suspension of Martinez. The greater the coercive nature of the defendants' demands, the less likely it is that the court will find their actions privileged.

> The issue is not simply whether the actor is privileged to cause the harm, but rather whether he is privileged to cause it in the same manner in which he does cause it. Restatement, Torts sec. 766(1938). See Perkins v. Pendleton, 90 Me. 166, 38 Atl. 96,99 (1897).

If malice is defined in terms of the absence of legal justification, and if an unqualified privilege to interfere with Martinez' economic opportunity would include the right to act maliciously, by definition the defendants enjoy no unqualified privilege in the instant case. There are, however, several cases which suggest that the defendants were qualifiedly privileged to act in the manner they did.

In Middlesex v. Carteret Industrial Association, 37 N.J. 507, 181 A2d. 774 (1962) the plaintiff had entered into settlement negotiations with the town of Carteret regarding a claim for breach of contract that he was prosecuting against the municipality. When the defendants -- taxpayers and representatives of taxpayers -- urged that the settlement proposal be rejected because they felt the plaintiff could not prove the alleged amount of damages, the town declined plaintiff's proposal. After failing to recover from the municipality in the amount of the original settlement proposal, plaintiff sued defendants for interference with contractual and business relations. In finding for the defendants the court stated that they were under:

> a duty as well as a right to make known to the municipal officials their objections to any settlement of claims, not only for their own benefit, but also for the benefit and protection of other citizens and taxpayers in the community. Middlesex v. Carteret Industrial Association, supra, at pp. 506-7.

Since there was in this case no existing contract between the plaintiff and the town of Carteret, the case is distinguishable from Martinez v. C.O.R.E. et al. on the basis that the courts will afford a higher degree of protection to a tangible contract right than to a mere inchoate claim for damages. Also, the citizens of Carteret may have special standing in their capacity as taxpayers to interfere in matters which will affect them economically. But in both cases the touchstone of the privilege rests upon our desire to encourage citizens and citizens' groups to present information to responsible officials vital to the well-being of the community. In so far as the members of C.O.R.E. and the Newark Citizens for Community Action were seeking to avert the tragic consequences now symbolized by Watts, their privilege appears deserving of a higher degree of protection than the privilege of citizens of Middlesex to advance the pecuniary interest of their fellow taxpayers.

The truth or falsity of the information offered can not be the measure of the privilege for the same reason that libelous, non-malicious statements about public officials are privileged.

> A rule compelling the critic of official conduct to guarantee the truth of his factual assertions ... leads to a comparable self-censorship. New York Times Co. v. Sullivan 376 U.S. 254, 84 Sup Ct. 710 (1964), See Sweeney v. Higgins 117 Me. 415, 104 Atl. 791 (1918).

In Liccardi v. Molnar, 23 N.J. Misc. 361, 44 A 2d. 653 (1945) the Garfield Taxpayers Association asked the mayor and city council to investigate a report that a firm was requested to pay a $10,000 bribe to keep their real estate assessments at their then present level. The Board of Tax Assessors brought a defamation action against the Garfield Taxpayers Citizens Association, but the court found for the defendant; the court stated that they were "performing the function for which the defendant association was incorporated."

So too it would seem that the Newark Citizens of Community Action were exercizing an important public function, and any attempt at imposing liability on them or their members would result inevitably in an emasculation of their fervor and the fervor of similar organizations in protecting the public weal. Just as expert advice from a doctor or attorney is ordinarily privileged, so too the NCCA -- if not actually experts in the field of community relations -- were at least serving as a vital link between the mayor and the people. While it is true that the privilege of a professional to extend advice and treatment within the bounds of his expertise is partially justified on the grounds that his professional skill has been solicited, in a case like the present one a group like the NCCA would be paralyzed if they were not permitted to take the initiative. Under these circumstances the law should induce the free flow of information from representatives of the varying citizens groups; it should not erect blockades to the passage of information to the mayor, particularly when that information is not otherwise readily accessible to him.

McKee v. Hughes, 133 Tenn. 455, 181 S.W. 930 (1916), involves an action by a merchant against townspeople for inducing the mayor and alderman to revoke his license. The interesting aspect of this case is that the court held for the defendants even though the mayor and alderman were not legally empowered to effectuate the revocation. "They were deeply interested, and had therefore a right to speak out." McKee v. Hughes, supra, at p. 461. Thus, even if mayor Addonizio lacked the legal power to suspend the plaintiff, it seems illogical to penalize the defendants for the mayor's own ignorance of the scope of his authority.

While the plaintiff alleges in counts one and two of his complaint that the defendants conduct is willful, malicious, and reckless; he does not allege in either of these counts that any of the statements made are untrue. In the aforementioned Licciardi v. Molnar, 23 N.J. Misc. 361, 44 A2d, 653 (1945) the court held that the defendants' communications to the city officials -- even if libelous -- would be qualifiedly privileged. There is an important interest in this area in providing government officials with reliable information culled from varying sections of the community so that they may formulate intelligent bases for their actions. Thus, disregarding the Constitutional protection afforded free speech, there would seem to be justification for extending the privilege further where the government authorities are not being misled than where they are the recipients of false information.

Since the determination of whether the defendants' conduct is privileged in the instant case involves the somewhat subjective evaluation of many disparate factors, it is impossible to predict with real confidence whether the Essex County Court will find their conduct privileged. But it is our opinion that the better arguments support the defendants' position, and that there is a strong probability that the court will find the defendants' interference with the economic interest of the plaintiff qualifiedly privileged.

5. IF THE PLAINTIFF HAS NOT SUFFERED ANY PECUNIARY LOSS, CAN HE NEVERTHELESS RECOVER DAMAGES FOR THE DEFENDANTS' INTERFERENCE WITH HIS ECONOMIC OPPORTUNITY?

Although Martinez is bringing an action for interference with his economic opportunity, he is not alleging that he has suffered any economic loss. We have been unable to find any comparable case where the plaintiff is not seeking compensation for some monetary deprivation. Nevertheless, dicta in various cases suggest that if the court finds that Martinez has suffered an actionable wrong, and if Martinez is able to prove either loss of reputation or mental anguish, he will have a right to recover damages.

Thus, in another jurisdiction where plaintiffs were discharged by their employer at the insistence of the Industrial Trade Union of America, the court held that the plaintiffs could recover and that consideration of mental suffering caused by the shame and embarrassment resulting from plaintiffs' discharge was proper in determining damages. Savard v. Industrial Trades Union of America et al., 76 R.I. 496, 501, 72 A2d. 660 (1950) (dictum).

This appears to be the New Jersey rule also. Kuzma v. Millinery Workers, Local 24, 27 N.J. Super. 579, 99 A2d. 833 (1953), involved an inducement of an employee's dismissal for failure to contribute to a collection to a fund for a union official. The Superior Court, Law Division, struck the wife's claim based upon pain, humiliation, mental anguish, and emotional distress. The Appellate Division reversed quoting with approval 15 Am. Jur. 596:

> In most jurisdictions in fact, damages are recoverable for mental anguish and suffering caused by a willful, wanton, malicious, or intentional wrong, even though no bodily injury is sustained or other pecuniary damage alleged or proved.

Whereas in this case there was actual monetary loss, there is additional dicta to the effect that pecuniary loss is not a prerequisite to the recovery of damages when the loss is caused intentionally, Hence, in the instant case the failure of the plaintiff to prove monetary loss would not, in and of itself, bar him from the recovery of compensation for mental anguish and loss of reputation.

6. IF LOCAL C.O.R.E. IS LIABLE IN TORT, CAN ITS LIABILITY BE IMPUTED TO NATIONAL C.O.R.E.?

The general agency rule is that one who acts for another can bind the other in contract or tort, even in the absence of the right of control by the other. If the principal has expressly authorized the agent to act, or if the agent's actions are within the scope of his implied authority, liability for any torts committed by the agent can be imputed to the plaintiff. Seavey, Handbook of the Law of Agency (1964), secs. 8b, 8c; Davis v. Trust Co. of New Jersey, 26 N.J. Misc. III, 57 A.2d 380 (Supreme Ct., 1948)

Mr. Debevoise's letter notes that National C.O.R.E. exercises "no control over the actions of its local chapters other than the establishment of general policies."; the third separate defense in C.O.R.E.'s answer states that local chapters are independent and self-governing. The scope-of-authority doctrine contemplates a situation in which the principal has conferred general authority on the agent to act for him (by means of such a directive as "Manage my business", Seavey, Handbook of the Law of Agency, Sec. 8c). It is unlikely that National C.O.R.E. grants its local chapters authority to act for it at all since the locals are autonomous. The fact that National C.O.R.E. establishes"general policies" for its "independent" locals seems to amount to a giving of political counsel and guidance rather than a grant of authority to locals to act on the National's behalf. Cases which deal with the question of scope of authority involve much better-defined grants of authority, and greater responsibility of agent to principal than is involved here. See, e.g., Davis v. Trust Co. of New Jersey, 26 N.J. Misc. III, 57 A.2d 380 (N.J. Supreme Ct., 1948); Niegel v. Seaboard Finance Co., 68 N.J. Super. 542, 173 A.2d 300 (1961); Peterson v. Crossley, 14 N.J. Misc. 501, 185 Atl 926 (N.J. Supreme Ct., 1936), aff'd per curiam 117 NJL 525, 189 Atl 624 (E&A 1937); Faulkner v. Martin, 133 NJL. 605, 45 A.2d 596 (E&A 1946).

The doctrine of apparent authority may present difficulties also. Where conduct by the alleged principal has led third parties reasonably to believe that x is his agent, x is held to be apparently authorized to bind the principal. Conduct by the principal which results in his being bound can be a direct statement to the third party that x is his agent, or a direction to x to so inform the third party, or permission to x to do acts which give him the reputation of authority. Seavey, Handbook of the Law of Agency (1964) sec. 80; Restatement, Second, Agency, sec. 254(2). This might involve as little on National C.O.R.E.'s part as allowing local chapters to bear its name.

But at least one New Jersey case states that as a general rule the doctrine of apparent authority is irrelevant to a situation in which the agent has committed a tort, since it could not be said that there was reliance by the victim on the tortfeasor's reputation as an agent. N. Rothenberg & Son, Inc. v. Nako, 49 N.J. Super. 372, 139 A.2d 783 (1958). This view however, is contrary to the one expressed by the Restatement in relation to defamation; the Restatement position is grounded on the notion that the defamer's reputation affects the harm done by his defamation. Comment c to Sec. 247, which is expressly made applicable to Sec. 254, says:

> But defamation is effective, in part at least, because of the personality of the one publishing it. Thus, one who appears to have authority to make statements for the employer gives to his statements the weight of the employer's reputation. For this reason the liability of the master may be based upon apparent authority.

The Restatement's position is based on the seemingly sensible view that, since the principal has increased the harm done by his agent's tort by allowing him to cloak himself in the principal's authority, liability should be extended to the principal. The New Jersey Court has said in effect that where there is no reliance by the victim himself on the agent's reputation (even though there is reliance by others), liability should not be extended to the principal. This seems like a somewhat arbitrary distinction between tort and contract liability.

A principal may also be bound by his agent's tort if he ratifies the agent's actions. Annot., 150 ALR 1338, 1340. This should present little difficulty since neither James Farmer nor National C.O.R.E. knew of local C.O.R.E.'s activities until they were served with process. One New Jersey case seems to hold that a union local ratified the tortious acts of its Financial Secretary by defending them in its answer to plaintiff's complaint, Cyrus Currier & Sons v. International Molders Union of North America, Local No 40, 93 N.J.Eq. 61, 115 Atl. 66 (1921). But because the court relies on more than ratification, and possibly because of the court's very strong anti-union bias, its position on the issue of ratification should not be given too much weight.

A case very similar in the agency relationships involved to Martinez v. C.O.R.E., and in which scope of authority, apparent authority, and ratification were all pressed (unsuccessfully) by the plaintiff, is United Mine Workers of America v. Coronado Coal Co., 259 US 344 (1922). Plaintiff, who was successor to the receiver of another coal company, sued the United Mine Workers (UMW) and its officers; District No. 21 of the UMW (which governed locals in Arkansas, Oklahoma and Texas) and its officers; 27 UMW locals in District No. 21 and their officers; and 65 individuals, most, but not all, of whom were UMW members. The case grew out of a labor dispute; plaintiff sued for treble damages under the Sherman Act, alleging conspiracy to restrain and monopolize interstate commerce. The UMW International was governed by a constitution; Districts and locals were governed by their own constitutions and by the International's. Art. XVI of the latter's constitution prohibited any Districts from engaging in a strike involving all or a major part of its members without sanction by the International Convention or Board. Art.XVI, sec. 2 permitted Districts to engage in local strikes "on their own responsibility, but when local strikes are to be financed by the International Union, they must be sanctioned by the International Executive Board" (emphasis added). The Coronado case involved a local strike, which was organized and carried on by District No. 21 and the locals only. The Supreme Court, relying heavily on the conferral of local autonomy in the UMW constitution, held that verdict should have been directed in favor of the International. Plaintiff argued that since the International could discipline District organizations, make local strikes its own and pay for them (even though it had not done so here), it had a duty to "superintend" local strikes. The court disagreed, saying, "Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency which the constitutions of the two bodies settle conclusively." 259 U.S. 344, 395. In answer to plaintiff's assertion that the District's activities were within the scope of its authority, the court said:

> But it is said that the District was doing the work of the International and carrying out its policies and this circumstance makes the former an agent. We can not agree to this in the face of the specific stipulation between them that in such a case unless the International expressly assumed responsibility, the District must meet it alone. The subsequent events showing that the District did meet the responsibility with its own funds confirms our reliance upon the constitutions of the two bodies. 259 U.S. 344, 396.

The court also held that the International had not ratified District 21's actions, although it appeared that the

President of the International early learned of the dispute, and reported about it to the International Board; and that sympathetic articles about the strike had appeared in a magazine published by the International.

7. IF INDIVIDUAL MEMBERS OF LOCAL C.O.R.E. ARE LIABLE, IS LOCAL C.O.R.E. LIABLE?

Courts in many jurisdictions make no distinction, in passing on the issue of vicarious liability, between unincorporated associations on the one hand, and corporations or individuals on the other. An agent of the association can bind the association's assets, and sometimes those of its members, if his actions are authorized, ratified, or within the scope of his authority. Pandolfo v. Banto of Benson, 273 F. 48 (9th c -1921) (libel published by secretary of a bankers' association); Cyrus Currier &.Sons v. International Molders' Union of North America, Local No. 40, 93 N.J. Eq. 61, 115 Atl. 66 (1921) (union local held a "co-partnership", the action of any one member of which was binding on all). But this case is an unconvincing one, for the reasons noted above.

Other jurisdictions allow imposition of vicarious liability only to the extent that the membership has expressly authorized or ratified the acts in question. In Johnson v. Miller, 63 Iowa 529, 17N.W. 34 (1883), plaintiff sued the membership of an "anti-horse-thief association" for malicious prosecution. Held, only those members who voted in favor of the specific acts at issue, intentionally aided in their commission and contributed money in furtherance of them, were liable. Accord, Malloy v. Carroll, 191 NE 661 (Mass, 1934). Bloom v. Vauclain, 329 Pa 460, 198 Atl. 78 (1938) (involving contract liability).

Courts seem likely to take this approach when, as at common law, only the members, and not the association itself, can be sued; or, as in equity, when a class suit can be brought against the entire membership. See Guy v. Donald, 203 U.S. 399 (1906); Thomas v. Dunne, 131 Colo. 20, 279 P.2d 427 (1955). But if a statute allows an unincorporated association to be sued in its own name, courts seem more likely to apply the same agency principles that are applied to corporations, at least with respect to the common property of the association. Accord, Thomas v. Dunne, supra; the Colorado statute seems similar to R.S. 2:78-1, N.J.S.A. 2A:64-1.

An important exception is New York, whose enabling act has been interpreted as procedural in nature only, and as conferring no greater rights on a plaintiff than he would have had at common law. Martin v. Curran, 303 N.Y. 276, 101 N.E 2d 683 (1951).

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A-9503

HENRY MARTINEZ,)

Plaintiff,)

-vs-) Civil Action

CONGRESS OF RACIAL EQUALITY,)
a New York corporation, et al.,)

Defendants.)

MEMORANDUM OF LAW
OF
CONGRESS OF RACIAL EQUALITY
AND
JAMES FARMER

On the Brief,
MARTIN F. MURPHY

DICKINSON R. DEBEVOISE, ESQ.
Attorney for Defendants,
Congress of Racial Equality
and James Farmer

STATEMENT OF FACTS

This is an action instituted by plaintiff, Henry Martinez, against Congress of Racial Equality ("CORE"), James Farmer and certain others.

Count One of the complaint alleges, among other things, that on June 12, 1965 plaintiff . . ."Was involved in an incident which eventually caused the decease of one Lester Long . . ." It also alleges that on June 17, 1965, CORE, James Farmer and others conspired together and at the Newark Mayor's Office "maliciously and illegally demanded the suspension of Henry Martinez, a patrolman for the City of Newark", and that as a result plaintiff and his family suffered injuries.

Count Two in effect is a repetition of Count One and asserts that defendants' conduct was wilful, malicious and reckless and was with actual malice.

Counts Three, Four and Five do not pertain to CORE and James Farmer.

Count Six alleges that CORE, James Farmer and others conspired and agreed to publish a document which stated that ". . .Lester Long, Jr., was murdered by a policeman . . ." and also alleges that said statement was untrue, defamatory and caused injury to plaintiff.

Count Seven alleges that CORE, James Farmer and others conspired and agreed to publish a document which also set forth untrue and defamatory material which caused injury to plaintiff.

Defendants, CORE and James Farmer, answered, admitting that Lester Long, Jr., had been shot and killed by plaintiff, and further admitting that Newark Citizens for Community Action (not CORE or James Farmer), an organization consisting of individuals active in Newark's religious, welfare, civil rights and professional organizations, had recommended to Newark's Mayor that, until the circumstances of the shooting could be investigated, plaintiff be removed from duties which took him into the neighborhood where the shooting took place.

Defendants, CORE and James Farmer, denied the various other allegations of the complaint.

On depositions James Farmer testified that he did not know most of the defendants with whom he had allegedly conspired, that he had not even spoken to any of the defendants about the shooting incident until the date he was served in this action, that he knew nothing of the meeting with the Mayor of Newark and that he had not known of the existence of the documents referred to in the complaint until he was served in this action.

James Farmer and CORE served detailed interrogatories upon plaintiff on October 8, 1965 in an effort to determine the basis of plaintiff's charges set forth in the complaint. On January 31, 1966 plaintiff served upon said defendants purported answers to the interrogatories. Some of the interrogatories were not answered at all. Some were answered in meaningless phrases. Some answers were totally unresponsive. Other purported answers were in a form such as "Conspiracy to be proven by facts elicited at trial from occurrence at Mayor's office" (#10), or "Will be developed at depositions of respective parties" (#13), or "Conspiracy to be proven by fact and circumstantial evidence" (#21) or "to be developed on deposition" (#28).

After reading plaintiff's answers to said defendants' interrogatories, it is perfectly obvious either that plaintiff is wilfully refusing to reveal the facts constituting the basis of his action or else that plaintiff knows no facts giving rise to any actions against CORE or James Farmer.

Plaintiff served interrogatories upon said defendants. Certain of these interrogatories inquired into said defendants' income, assets and financial affairs, which are improper areas of inquiry until plaintiff makes a prima facie showing of malice. One interrogatory was vague and highly ambiguous. Another interrogatory asked for legal opinions and conclusions.

CORE and James Farmer have moved to strike plaintiff's objectionable interrogatories. They have also moved either to dismiss the complaint against them or, in the alternative, to require plaintiff to give responsive answers to defendants' interrogatories.

This memorandum is submitted in support of defendants' motions.

ARGUMENT

I

DEFENDANTS' MOTION TO STRIKE CERTAIN OF PLAINTIFF'S INTERROGATORIES SHOULD BE GRANTED.

By this motion, the defendants Congress of Racial Equality and James Farmer, seek to strike certain of the plaintiff's interrogatories.

Interrogatories 6, 7 and 8 are not relevant to the subject matter involved in this action in the present status of the case. Interrogatory #6 seeks information concerning the assets of the defendant Congress of Racial Equality, while interrogatories #7 and 8 seek information about the wealth and financial status of the defendant James Farmer. New Jersey cases dealing with interrogatories of this nature have held that such information is privileged and irrelevant until such time as punitive damages are in issue. They further state that punitive damages are not in issue until there has been a prima facie showing of express malice. In the case of Warren v. Hague, 11 N.J. Super. 311 (App. Div. 1951), the plaintiff was seeking compensatory and punitive damages in an action for libel. In discussing the validity of the plaintiff's request for facts concerning the defendant's wealth and financial status, the court stated that,

> ". . .before the plaintiff could recover on his claim for punitive damages he would be

> required to establish express malice and since the defendant's actual wealth would only be material thereunder, his examination on that subject should not be permitted without advance prima facie showing of such malice. But cf. 4 Moore's Federal Practice (2d. ed. 1950), pp. 2025, 2031." (Emphasis Added)

The Hague case was cited as authority for this proposition in the case of Gierman v. Toman, 77 N.J. Super. 18 (Law Div. 1962), wherein the plaintiff in a suit for malicious prosecution sought information respecting the defendant's wealth. By interrogatories he sought to have the defendant state his "present personal net worth, including the following: (a) Describe and list bank accounts, real property, stocks, bonds, insurance, both life and casualty, and all other personal and real property; (b) Describe and list all obligations, debts and liabilities; (c) State defendant's personal taxable income, from all sources, for the years 1960, 1961 and 1962; (d) Set forth or attach copies of defendant's Federal Income Tax returns for the years 1960 and 1961." The court in holding that the defendant's wealth was not relevant to the subject matter stated that,

> ". . .proof of the existence of malice lays a foundation for punitive damages, and in those situations the wealth of a defendant is a matter for consideration. . .
>
> . . .Just and orderly procedure here requires that prima facie proof of the right to recover punitive damages should precede the right to a general disclosure of wealth; and as to details such as requested here, the rules furnish sufficient protection against abuse and harassment."

The plaintiff, Henry Martinez, has not set forth a prima facie showing of express malice justifying his inquiry into the defendants wealth and financial status. Substantially all allegations in the complaint are of a general and conclusory nature and have been denied by the defendants, Congress of Racial Equality and James Farmer. Said defendants served detailed interrogatories upon plaintiff in an effort to determine what facts plaintiff relies upon. Plaintiff's answers add virtually nothing to the generalities pleaded in the complaint and are so patently inadequate as to disclose that plaintiff at this juncture has no basis for a claim of malice, conspiracy or anything else insofar as these defendants are concerned.

Interrogatory #9 is vague, ambiguous and uncertain. In effect the question calls for information concerning conferences which took place before the shooting alleged in the complaint. By seeking information of this nature, it calls for information concerning conferences having nothing to do with the plaintiff stretching back indefinitely through the years. Therefore, it can be considered as calling for information that is not relevant to the subject matter involved in this action. This interrogatory is so phrased, that plaintiff seeks information concerning any conference that ever took place between James Farmer and the other defendants regardless of the nature of the conference and regardless of when it took place.

The defendants object to plaintiff's interrogatory #12 on the ground that it calls for an opinion and a legal conclusion which the defendants are neither competent nor obliged to furnish. New Jersey R.R.4:16-2 expressly prohibits interrogatories of this nature when it states,

> "nor shall the deponent be required to produce or submit for inspection any part of a writing which reflects an attorney's mental impressions, conclusions, opinions, or legal theories, or except as provided in Rule 4:25-2, the conclusions of an expert."

In the New Jersey case of Williams v. Marziano, 78 N.J. Super. 265 (Law Div. 1963) before Judge Glickenhaus, it was held that an interrogatory that

> "patently calls for a legal conclusion on the part of the defendant and is therefore improper. . .
>
> . . .Inquiry under R.R.4:16-2 into the opinions or contentions of a party are improper. 2 Schnitzer and Wildstein, New Jersey Rules Service, AIV-659. . ."

The above cited section of Schnitzer and Wildstein in discussing R.R.4:23-9 states that,

> ". . .As is the case of depositions, interrogatories calling for non expert opinions, conclusions, conclusions of law, contentions, comparisons, explanations, impressions, legal theories, and the like do not come within the scope of discovery and are improper and objectionable."

By interrogatory #12, the plaintiff seeks the basis for James Farmer's contention that he had a Constitutional right to make statements regarding the plaintiff. To answer a question of this nature, the defendant would be obligated to call upon his attorney as to conclusions regarding the defendant's Constitutional rights.

II

DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO ANSWER CERTAIN INTERROGATORIES OR IN THE ALTERNATIVE TO COMPEL ANSWERS OR MORE RESPONSIVE ANSWERS SHOULD BE GRANTED.

The defendants' interrogatories were served upon the plaintiff on October 8, 1965. Under R.R. 4:23-6, the plaintiff was required to give fully responsive answers to each interrogatory within 60 days after service. The defendants did not receive any answers until January 31, 1966. At that time the defendant returned the propounded interrogatories not having answered several questions at all and giving only partial answers to other questions. It is submitted that the Court should impose sanctions under R.R. 4:25A-7 by either dismissing the plaintiff's complaint, or in the alternative by compelling him to answer or give more responsive answers.

In the case of Lang v. Morgan's Home Equipment Corp., 6 N.J. 333, 339 (1951) the Court stated that,

> "The dismissal of a party's cause of action with prejudice, is drastic and is generally not to be invoked except in those cases where the order for discovery goes to the very foundation of the cause of action, . . ., or where the refusal to comply is deliberate and contumacious, . . .
>
> . . .The defendant answered certain of the interrogatories, but as to others merely stated they were 'improper' without any attempt to comply with Rule 3:33

(4:23-8)."   (Parenthesis Added)

Schnitzer and Wildstein, New Jersey Rules Service, AIV-645 in discussing the Lang case stated that,

> ". . .merely answering the interrogatory by stating that it is 'improper' is not compliance with the Rule, and may even be the basis for an inference of contumacy. . ."

The plaintiff's answer to interrogatory #15 is that it is improper. The plaintiff's remedy to object to the nature of the interrogatory was by motion under R.R. 4:23-8, not by stating in answer that it is improper.

The answer to interrogatory #15 combined with reasons hereinafter stated will support the defendants' contentions that the complaint against them should be dismissed. It should be noted that the Rules now provide for summary dismissal in the event of failure to answer interrogatories within the period prescribed.

In replying to interrogatories #13, 14, 28, 29 and 38, the plaintiff states that the answers to these questions "will be developed at depositions." Schnitzer and Wildstein, New Jersey Rules Service, AIV-636, when discussing the form of answers to interrogatories, cites the case of Hyster Co. v. Industrial Power Equipment Co., Inc., 9 F.R.D.685 (D. Ct. Mo. 1950), for the proposition that,

> ". . .answers to interrogatories which refer to depositions from which it is inferred that the requested information may be obtained, are not "fully" answered. . ."

More recently, Hyster Co. v. Industrial Power Equipment Co., Inc., supra, was cited for the same proposition in the case of Smith v. Danvir Corporation, 188 A 2d 120, 96 ALR 2d 596 (Super. Ct. - Del. 1963). The case further states,

> ". . .that interrogatories should be answered directly and without evasion in accordance with information which the answering party possesses after due inquiry. * * * . It has been ruled that an interrogatory should be answered directly, responsively and affirmatively."

Under New Jersey Rules, R.R. 4:23-6, the party answering is required to give "fully responsive answers." Applying the rationale of the preceeding cases, the plaintiff has not given "fully responsive answers" to these particular interrogatories by referring to depositions taken or to be taken.

The defendants contend that the plaintiff has not given full and complete answers to interrogatories #19, 52 and 53. In interrogatory #19, the plaintiff does not complete his answer by merely listing the damages. The interrogatory also requests that he set forth any amounts claimed as a result of the damages listed. The defendant has refused to set forth this requested information and in this respect has not completely answered the interrogatory.

The plaintiff again fails to completely answer interrogatories 52 and 53. It is true that he answers the question as to the doctor consulted, but he either fails or refuses to list the number of treatments received, the dates and places of such treatments, and the nature of the respective treatments, as requested.

As required under R.R. 4:23-6, the answering party must give "fully responsive answers" to the questions asked. In interrogatories 11, 30, 32, 33, 34, 42, 45 and 46, the plaintiff fails to give what is to be considered a "fully responsive answer." In answering interrogatory 11, by stating that, "This information within knowledge of Mayor and staff", the plaintiff evades answering the real question. The purpose of the question is to find out whether the plaintiff knows of any written memorandums or recordings of the meeting that took place on June 17, 1965 and what they contain. If he didn't have any information of this nature he should so mention rather than merely stating they were in the Mayor's office. If he has information he should state what it is.

The plaintiff also fails to give what would be considered a "fully responsive answer" to interrogatory 30. If plaintiff has knowledge of these facts he should state this in his answer. He replies by stating that the persons who read the document were the crowd and policemen detailed to the scene. The defendants requested the name and address of these people. If the plaintiff does not have this information, he should state that he doesn't have the names

and addresses of the police officers or members of the crowd. If he has the information he should give it.

The same reasoning applies to the answer given to interrogatory 42. Until he answers in this manner, he has not given a responsive reply.

The reply to interrogatory 32 (a) is not responsive. The information sought is the facts surrounding the actual knowledge of the documents by James Farmer. The plaintiff refuses to give such facts and instead sets forth a legal theory of constructive knowledge.

The plaintiff again fails to respond to interrogatory 33 (a) (c). Under subsection (a) the plaintiff does not set forth when and where each defendant learned of the existence of the alleged document referred to in the complaint, as requested. Instead the plaintiff replies by setting forth an unintelligible statement about "defendants listed in the suit who are members of C.O.R.E." Under subsection (c) the plaintiff states as part of his answer the reply "other means." It is the purpose of the interrogatory as clearly expressed in its content that this is precisely what the defendants are seeking, namely, what other means.

Interrogatory 34 is not answered in that the plaintiff does not set forth what was requested. To state that the "document speaks for itself" does not answer the question "when and in what manner did the Congress of Racial Equality designate. . . .its representatives to act on its behalf. . ."

The same reasoning applies to interrogatory 46. Regardless of whether the facts speak for themself, as the plaintiff states in his reply, it is the purpose of interrogatories to search and discover the facts. As stated in White Tower Management Corp. v. Erie Main Corp., 28 N.J. Super. 425, 428 (Law Div. 1953),

> "Defendant is entitled merely to a statement of such facts as exist. . ."

Interrogatory 46 is not fully answered. The reference to depositions in answer to subsection (a) has been covered previously by the rationale of Hyster Co. v. Industrial Power Equipment Co., Inc., supra. Subsection (c) is not even answered as to what manner agents were designated. It unquestionably appears by the reply of the plaintiff that he neglected to answer this part of the interrogatory. The answers to interrogatory 46 (b) (as is the answer to interrogatory 33 (b)) are improper. R.R. 4:16-2 incorporated into the section on interrogatories by R.R. 4:23-9, states,

> ". . .Nor is it ground for objection that the examining party has knowledge of the matters as to which testimony is sought. . ."

Therefore regardless of whether such information was "within knowledge of Defendant", as stated, the plaintiff was obligated to answer the question propounded.

It is the defendants' contentions that the answer to interrogatory 18 is unintelligible. The plaintiff's answer does not make any sense in respect to the question set forth. In addition to this the plaintiff does not complete his answer; he refuses to set forth any dates upon which the alleged changes might have taken place.

The answer to interrogatory 15 is also objectionable. As stated previously in the case of Lang v. Morgan's Home Equipment Corp., supra., the reply to an interrogatory by stating that it is "improper" is not compliance with the rules. The rules provide an adequate relief for objections to the form of the interrogatories. As evidenced by his answer, the plaintiff did not avail himself of this procedure. It should also be pointed out that the plaintiff's objection by stating the interrogatory is improper is incorrect. As stated in 2 Schnitzer and Wildstein, New Jersey Rules Service, AIV-652,

> "Hearsay or other useful information, while itself may be incompetent or inadmissable at the trial, may, nevertheless, furnish leads to admissable evidence. Thus R.R. 4:16-2, incorporated into R.R. 4:23-9, provides that, 'it is not ground for objection that the testimony will be inadmissable at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissable evidence. . ."

In answer to interrogatories 21, 37, 38, 41 and 44 the plaintiff states basically that, ". . . .to be proven by facts and circumstantial evidence." or "facts to be developed." The defendants object to this type or form of answer. As stated in 2 Schnitzer and Wildstein, New Jersey Rules Service, AIV-625,

> "The Rule states that the function of interrogatories to parties is to obtain 'discovery', a means by which each party to a pending action may, before trial, 'make the most searching inquiry into the other party's claim or defense' . . .in order that substantial justice may be achieved.' . . . Interrogatories to parties are an especially productive technique for discovery of relevant facts. . ." (Emphasis Added)

Therefore, since it is the nature of interrogatories to search for facts, an answer stating that facts will be developed or proven is evasive. It is of no interest to the defendants how the plaintiff will prove his facts, the defendants request only to have knowledge of these facts.

In answer to interrogatories 20, 22 and 29, the plaintiff states that the answers will be ascertained by looking at previous answers. In effect this is not a proper form of an answer because the defendants cannot ascertain what particular answers to which the plaintiff is making reference. Aside from this objection to the interrogatories, it is clear that the plaintiff by answering in this manner, incorporates all objections to answers previously given. Therefore on that ground also, the defendants object to the form of the answer given by the plaintiff.

As regards, interrogatories 49, 50, 51, 58 and 59, the plaintiff does not even attempt to give answers. On this ground alone, the court should impose sanctions as provided in R.R. 4:25A-7. The refusal to answer these particular interrogatories is further evidence of the plaintiff's wilful and contumacious disregard of the discovery Rules. This combined with his neglect or refusal to give fully responsive answers to almost one half of the interrogatories served upon him by the defendants, should establish persuasive grounds upon which to impose the sanctions requested.

CONCLUSION

For the reasons set forth above these defendants urge the Court to enter an order (i) striking plaintiff's interrogatories 6, 7, 8, 9 and 12 and (ii) either dismissing the complaint against these defendants or compelling plaintiff to answer completely and fully defendants' interrogatories.

Respectfully submitted,

Dickinson R. Debevoise

Dickinson R. Debevoise
Attorney for Defendants,
Congress of Racial Equality
and James Farmer

On the Brief,
Martin F. Murphy

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A 9503

HENRY MARTINEZ, :

Plaintiff, :

vs. : Civil Action

CONGRESS OF RACIAL EQUALITY, :
et al.,
:
Defendants.
:

- - - - - - - - - - - - - - - - - - -

MEMORANDUM OF LAW ON BEHALF OF PLAINTIFF, HENRY MARTINEZ

- - - - - - - - - - - - - - - - - - -

FRIEDMAN & D'ALESSANDRO
1180 Raymond Boulevard
Newark 2, New Jersey
Attorneys for Plaintiff

On the Brief:

Edward G. D'Alessandro
Nicholas Scalera

STATEMENT OF FACTS

In July of 1965 a Complaint was filed in the Essex County Court charging defendants, amongst other things, with a conspiracy to interfere with the economic advantage of Henry Martinez, slander and libel. Subsequent to the service of the Complaint upon the several defendants discovery proceedings were commenced on behalf of the parties. Prior to taking of the depositions of one Reverend B. Everett, depositions were taken of the plaintiff, of the defendants, James Farmer, Robert Curvin, Fred Means, Andrew Washington, Charles Tuller and CORE, Newark Essex Chapter, an unincorporated association, and the corporate body of the Congress of Racial Equality. Mr. Edward G. D'Alessandro appeared on behalf of the plaintiff at all of these depositions, all of which were taken in an orderly and proper fashion and were limited solely to the issues set forth in the Complaint and Answers filed.

Thereafter on October 7, 1966 there was scheduled the taking of depositions of Reverend Richard Cantrell, a defendant; Thomas Edwards, a defendant; and one Reverend Seymour B. Everett, a witness. The depositions of Seymour B. Everett were taken to learn factually what had occurred at a meeting in the offices of the Mayor of the City of Newark, Hugh J. Addonizio, on June 17, 1965, he having been present at said meeting. The depositions scheduled for this day were to be taken by attorney Nicholas Scalera on behalf of the plaintiff, Henry Martinez. Prior to the scheduled day Mr. Scalera had been advised that the Reverend Seymour B. Everett was present at the meeting of June 17, 1965 and would be in a position to recite what action occurred.

Before the taking of these depositions Edward G. D'Alessandro had numerous conversations with the attorneys for the defendants and on one occasion was informed by Arnold Mytelka, (one of the attorneys who had been substituted for one Carl Kaditus as attorney for the defendants, Curvin; Tuller; Washington; Means and CORE, Newark Essex Chapter, an unincorporated body), that the thought had occurred to him that it would not be a bad idea if he went to the Mayor of the City of Newark and prevailed upon him to have plaintiff and his attorney dismiss the suit as he did not feel that the suit would do anything to foster interracial relations in the community. Mr. D'Alessandro informed Mr. Mytelka that he thought that the decision as to whether or not the suit was meritorious was one for the courts and jury and that the attorneys involved should at all times act as "lawyers." This conversation was not conveyed to Mr. Scalera by Mr. D'Alessandro nor did Mr. D'Alessandro inform Mr. Scalera of a past relationship with the deponent, Reverend Seymour B. Everett. The instructions given were solely to confine the inquiries of Seymour B. Everett to the meeting of June 17, 1965 as framed by the issues in the pleadings.

The deposition of Seymour B. Everett was taken in Mr. D'Alessandro's office and at the time the witness appeared he was accompanied by his personal counsel, Thomas Gassert, who apparently had been asked to attend the depositions at the specific request of the witness.

Mr. Scalera began his questioning by generally asking the witness his recollection of the events that occurred prior to the time that the witness had attended the meeting in question. The interrogation then centered around what had actually occurred at the meeting. During this direct examination the witness made a derogatory remark concerning the attorney for the plaintiff, Mr. D'Alessandro, at which time Mr. Scalera directed to the record a motion to strike the answer as not being responsive.

Not so confined

The cross-examination of the witness was begun by Mr. Debevoise who immediately started to center his cross-examination on meetings which the witness had had with Mr. D'Alessandro at which time Mr. D'Alessandro had requested that the witness sign a statement concerning the witness' version of the meeting held in the Mayor's office. During the course of this cross-examination the witness again made allusions as to Mr. D'Alessandro's character, reputation and past personal history. At this point Mr. Scalera immediately raised objection to this line of question as not being

False

False

Not true

material to the issues involved in the actual suit. Mr. Debevoise merely voiced his opinion that it was and continued this examination along the same lines, directed solely to a personal attack on Mr. D'Alessandro. The vilification of plaintiff's attorney became more concentrated as the depositions proceeded. Mr. Scalera's protestations concerning this type of attack were ignored with the excuse that it was germane as far as the defendants' attorneys were concerned. This unwarranted and unethical attack was compounded when Mr. Mytelka took over the cross-examination of the witness. It then became apparent to Mr. Scalera that there had been a previous discussion concerning this area between Mr. Debevoise, Mr. Mytelka and the witness. During all of this time the witness' personal counsel remained silent and in no way attempted to inject himself into the vicious attack, preferring to give the witness a free rein.

Was brought out
by DRD on
cross exam

The attack finally reached its peak when Mr. Mytelka, having worked the witness up to a pitch, then asked the question, whether or not in the opinion of the witness, Mr. D'Alessandro was "fit" to be a member of the New Jersey Bar.

At that point Mr. Scalera vigorously objected again and then directed himself to the personal counsel for the witness and demanded to know whether or not that personal counsel was going to permit his client to answer the question.

It was then and only then, that the witness' personal counsel directed the witness not to answer the question because it was not relevant or material. It is interesting to note at this point, that counsel for the Reverend Seymour B. Everett at oral argument on October 14, 1966 before the Honorable Lawrence A. Whipple indicated to the Court that his client and he did not want the text of the deposition made public.

During the course of the depositions, Milton Yormark, attorney for Reverend Cantrell, having heard only part of the attack on Mr. D'Alessandro, saw fit to refuse to permit his client to be deposed and stalked out of the deposition room. Mr. Yormark has since indicated that the realization came to him that this attack was both unwarranted and in fact, not worthy of belief, by virtue of his past association with the plaintiff's attorney. This is further evidenced by his absence on the return day of this Motion, which would indicate that he had no objection to the plaintiff's Motion.

At the time of the depositions, Mr. Scalera was not armed with any information about the background or association between Mr. D'Alessandro and Reverend Seymour B. Everett, so he was in no position to attack the competency or credibility of the irregular and immaterial matters brought forth by Messrs. Debevoise and Mytelka.

Immediately after the deposition was completed, Mr. Scalera reported to Mr. D'Alessandro this scurrilous and unwarranted attack on his personal integrity and competency and it was agreed that immediate steps should be taken to remedy the situation. Mr. Scalera attempted to have the deposition voluntarily suppressed. In subsequent conversations with the attorneys for the respective parties the following ideas were conveyed: In the event that the entire matter, (referring to the suit,) was dropped, an agreement would be made to destroy the depositions. There is a possibility that the information contained in the deposition would reach the press. One of the defendants specifically requested a copy of the transcript so that that defendant could use it to discredit Mr. D'Alessandro in an attempt to have him removed from one of his positions, i.e.: Counsel to the Patrolmen's Benevolent Association.

At this time it should be emphasized that although the personal attack was made on Edward G. D'Alessandro, the Reverend Seymour B. Everett indicated at the deposition that at all times the only thing Mr. D'Alessandro ever sought from him was the truth and wanted him to report the truth as to what had occurred at the meeting of June 17, 1965. This information was elicited at the very end of the depositions in answer to direct questions by Mr. Scalera in the presence of all counsel then present.

ARGUMENT

Before the return day of the depositions the Court in this case indicated that it wished only to consider, whether or not the Court had the power or authority to stay the transcription of the depositions. At the oral argument, which was held in open court, it became necessary to allude indirectly to the background of this situation and again it is regrettably necessary to do so in the recitation of facts in this brief, as did the counsel for the defendants in their briefs.

It is important to note at the outset that this is an unusual situation wherein in a suit between one Henry Martinez and certain defendants, an attorney for one of the parties has found himself in a position of being the subject of a personal vilification. Instead of a direct attack without regard to the suit in question, the defendants and their attorneys have found it more convenient to use as a vehicle, the discovery proceedings in the case which is captioned hereinabove.

The relief sought is unquestionably unusual in nature--but that is because the evil (and the circumstances breeding it) which is sought to be remedied is unusual in nature.

Defendants' counsel at the oral argument, after listening to the citations offered by plaintiff's counsel, and in their written briefs filed with the court, pick at the technical distinction which may be maintained when argued in a normal civil case where the "clients, not lawyers, are the litigants." cf. Canons of Professional Ethics, 17 Appendix 2 to the Rules of Civil Procedure. Unfortunately the matter has not followed that normal procedure.

At the oral argument plaintiff's attorney offered as authority that the court may stay the transcript of these depositions the following rules: R.R.1:26-6; R.R.4:11; R.R.4:16-6; R.R.4:16-1; R.R.4:20-2; R.R.4:20-3; Canons of Professional Ethics, Nos. 15, 17, 18 and 30. In answer to these citations defendants' counsel offered the "tongue-in-cheek" argument that the precise situation before the court is not recited within the authorities. This same argument was offered in answer to the case citations by plaintiff's attorney wherein the courts had stricken scandelous and scurrilous references to the Court, adverse counsel, etc. Reitmeyer v. Reitmeyer, 140 N.J.Eq. 393 (E.&A., 1947); In re Glauberman, 107 N.J.Eq. 384 (E.&A., 1930); 103 N.J.Eq. 346; Bennett v. Piatt, 85 N.J.Eq. 602 (E.&A., 1916); Epstein v. Kuvin, 23 N.J.S. 482 (App. Div., 1952); Brown v. Bulkley, 14 N.J.Eq. 294 (Ch., 1862); 26A, C.J.S., Depositions, Sections 85 and 86.

There is no question in the writer's mind that there is no rule in the Rules of Civil Procedure that covers or specifically provides for a remedy in the situation which is the subject before the Court. The Canons of Professional Ethics were adopted by reference to our Rules of Civil Procedure and expressly condemn as "indecent", any allusions "to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side," point out what is obvious to us all, that "clients, not lawyers, are the litigants." Professional Ethics, No. 17.

Less it be misunderstood, our Supreme Court has indicated that under R.R.1:12, any person appearing in any action shall be under the control of the Court in which he appears; under R.R.1:25 indicates that the Canons of Professional Ethics shall govern the members of the bar and under R.R.1:26-6, that it is the "duty of every judge *** to *** inforce the provisions of R.R.1-26 *** and the Canons of Professional Ethics." It is ludicrous for counsel for the defendants to argue that this Court lacks the power to remedy any evil which has been specifically proscribed by the Canons, rendering the Court helpless to enforce its own Rules.

why

It is respectfully submitted that for the purpose of this aspect of the motion, it must be assumed that the material sought to be suppressed is scandelous, scurrilous, maligning and vilifying of the character of the attorney for the plaintiff and that the relief sought must be viewed in the light that such is the fact. If, after argument on the merits, it is adjudicated and found that such is not the case, no harm has been done--the transcript may be prepared in the usual manner. If the material is as alleged, then only the relief sought can properly protect from the obvious irreparable damage which will result.

Defendants' counsel have also indicated that during the pendency of the depositions Mr. Scalera could have interrupted the depositions under R.R.4:20-4. It may be noted that a reading of the Rules as technically and limited as defendants' counsel have done with reference to the citations by plaintiff's counsel, will immediately reveal that the Rule specifies particular further annoyance, embarrassment or oppressiveness to "the deponent or party." Needless to say, neither the deponent nor any party of this action was the victim of the attach, and an attack on an attorney lies without that Rule.

Moreover, from the very nature of what has been recited, it becomes obvious that the deliverate attack had already begun; and in view of the opinions then expressed by defendants' counsel it is obvious that Mr. Scalera's actions in attempting to absent himself from the depositions would only have resulted in continuation thereof without his presence. We would have been in exactly the same position as we are today, except that we would have been in the dark as

not true

to the contents of the attack after that.

It was suggested on oral argument that in the interest of "substantial justice" and under the "relaxation rule", the court might very well have the power, regardless of any specific rule or authority. From the very beginning of the Chancery jurisdiction of our Courts it has been axiomatic that Chancery has the power to enjoin any action by any person to prevent irreparable damage after weighing the equities. We eagerly invite the Court to weigh the equities in this case and suggest that, not only will the equities be weighed in favor of the moving parties, but any argument offered by the opposition will have to be considered as weighing in favor of the moving parties.

As indicated in the oral argument, it is difficult to understand or comprehend why counsel for the defendants insist that a written transcript be made now. The stenographers notes are intact and will be subject to the same scrutiny as those present at the depositions. It is interest to note that opposing counsel offered no direct answer to the question asking why they were so intent on a transcription. The Court's attention is directed to the several comments made by counsel as to what they or their clients intend to do with the transcript. (Parenthetically, the Court will recall that counsel for the defendants, not having been satisfied with an attack on Mr. D'Alessandro, also alluded to Mr.

Scalera's conduct during the course of oral argument. The merits of those allusions will be left to the court.)

It is reluctantly suggested to the Court that, if the Court feels a transcript would aid the Court, that only one copy be made. The Court may then consider whether or not the comments contained therein are of a nature that should be stricken and should not be furnished to counsel in transcribed form. In the event that adverse counsel feels they should be entitled to reflect on the comments to argue the irregularity or materiality of same, the Court direct attention to those areas to counsel and they will not be precluded from the so-called, "intellectual approach" to the problem. In that event, counsel for the defendants will be obtaining that which they have requested and counsel for plaintiff will be availed the immediate protection that he seeks.

Mr. Mytelka concludes his brief by the phrase "fundamental fairness plainly requires that the transcript***" be typed and furnished to the Court and counsel. It is suggested to the Court that if the situation were reversed and Mr. Mytelka were the victim of this attack, he would not have the same view of fundamental fairness that he now asserts.

It is also respectfully submitted to this Court that, in effect, the defendants' counsel are saying that the Court is powerless to correct the abuse heaped upon the attorney for the plaintiff, regardless of whether or not the attack is as scandelous, scurrilous and impertinent as alleged. One needs no citation or authority to conclude that our system of juris prudence has no such gap which would prevent, or render powerless, the Court from such action.

See the case of McGovern v. VanRiper, 137 N.J.Eq. 514 (Ch. 1945), affirmed in part and reversing order concerning leave to intervene, 137 N.J.Eq. 548 (E.&A., 1946).

In a learned and enlightening opinion with exhaustive citations the Vice Chancellor held that:

> The right of privacy is the right of an individual to be free from unwarranted publicity, or, in other words, to be protected from any wrongful intrussion into his private life which would outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities. (Cits. omitted)"

If such a right exists in favor of ordinary citizens, can it be said that a lawyer, as an officer of the Court, is entitled to less protection?

Lastly, the Court's attention is directed to the thunderous silence of defendants' counsel to the charge that the entire attack is violative of the Canons of Professional Ethics.

Respectfully submitted,

FRIEDMAN & D'ALESSANDRO

By S/ Edward G. D'Alessandro
Edward G. D'Alessandro

AUG 5 1965

LAW OFFICES
KADITUS & HELFGOTT

CARL J. KADITUS
CHARLES B. HELFGOTT

111 SOUTH ORANGE AVENUE
SOUTH ORANGE, N. J. 07079

763-7630
AREA CODE 201

August 2, 1965

Carl Rachlin, General Counsel
Congress of Racial Equality
38 Park Row
New York 38, N.Y.

Dear Mr. Rachlin:

Pursuant to our telephone conference on Sunday, please be advised that the next meeting of attorneys interested in the defense of Martinez vs. James Farmer, C.O.R.E., et als, is set for Friday, August 6, 1965 at 12:30 P.M. at the Y.M.C.A. at 600 Broad Street, Newark, New Jersey. The meeting of these attorneys and others concerning all future police brutality cases will be held on Monday, August 9, 1965 at 4:00 P.M. at the Essex County Bar Foundation, 92 Washington Street, Newark.

I am in accord with your belief that federal suits alone against police officers is insufficient to prevent police brutality. I believe a combination of procedures is necessary. Morton Stavis, Esq., argues that the spearhead should be suits in the federal courts. He buttresses this remedy with two reasons:

1. If you present the individual beaten by police and his skimpy evidence to the Police Director, County Prosecutor, State Attorney General or F.B.I., you will then lose control of the case. No effective pressure, such as by a group of outstanding clergy, attorneys and citizens, can compel these state or federal agencies to perform an effective investigation to obtain clear and convincing proof of the brutality. They will prolong the investigation, others "telegraphing" their attack, and you are still left with police investigating police in the same fraternal order.

2. If we have twenty or thirty suits in the federal courts against police officers and the municipalities, the police themselves will come around to the position that they are in favor of a Civilian Review Board to decide these cases, rather than allow a federal jury to decide them. He argues that the municipal police have close contacts with the County Court personnel and are generally not afraid of these cases being heard on the County level; whereas, they are afraid in a completely different "ball park", like the federal courts.

The last case that came to me through C.O.R.E., which I discussed with you, was finally aborted by the beaten person's extreme fear which finally caused him to run away. Neither I nor the group of clergy and attorneys could convince him that he would be protected and sheltered by us during and after the case, no matter what the final outcome. His extensive fear was real and highly rational because he was severely beaten by two officers in a tavern, turned over to two other officers in a patrol car, and beaten again by them for fighting with the previous officers, and finally incarcerated in the area police station for a short time by two additional officers in charge of the station. My preliminary investigation at the tavern confirmed the beating. The owner finally admitted three times that the police beat the individual, but he stated that I could never prove it. My investigation at the police station revealed that a complaint was recorded in the Complaint Book, but no entry exists in the Arrest Book, or record that he was incarcerated. The individual had the police numbers of the complaint for alleged malicious damage written on the back of his medical prescription, which matched the Complaint Book, ergo, he could not have known the number unless he was at that police station. I am convinced that the police did not want to charge him with any crime, not even a false charge, because they would then have had to bring him before a judge the next day, and the judge would have seen the knife wounds all over his arms (one artery was cut).

This was a rare case because the individual was not charged with a crime and it demonstrated the extent and depth of police brutality:

1st: two officers committing the brutality;
2nd: two additional officers continuing it to a lesser degree;
3rd: two additional officers finally covering up the entire event, thus, a total of six officers were involved.

Dedication and desire to abolish police brutality is only the launching pad of a remedy. Many attorneys and especially those of the highest caliber are absolutely necessary to accomplish this goal. There will be little or no fee involved, except that money which may come from damages awarded in civil suits. No single attorney or firm has the necessary manpower, time, or money to handle these cases on a large scale. Consequently, if the work load is spread among several, and coordinated effectively, we will attract attorneys who would otherwise be prevented from participating.

At the meeting of interested attorneys on August 9, 1965, I would like to propose the enclosed plan. The letters in each box represent the individual attorneys present; and the numbers represent additional attorneys who would be solicited into this ad hoc battery to fight police brutality. The size of each committee will naturally be changed according to need. This is simply a skeleton blue print, and I welcome all suggestions.

Your experience and presence will not only be greatly appreciated at this meeting, but will give great incentive to the entire project.

Best regards,

Carl J. Kaditus

CJK/dma
enclosure

Mateny's
Fan

August 11, 1965

Robert Carter, Esq.
NAACP
20 West 40th Street
New York, New York

Dear Robert:

Enclosed is a copy of the libel complaint against civil rights and community groups in Newark. I have been asked if you will join as one of the counsel. Local counsel will handle all details.

I trust you can give me an affirmative answer.

Cordially,

CARL RACHLIN
General Counsel

CR/cs
Enc.

moley v [illegible]

August 11, 1965

John Pratt, Esq.
Commission on Race & Religion
National Council of Churches
475 Riverside Drive
New York, New York

Dear John:

Enclosed is a copy of the libel complaint against civil rights and community groups in Newark. I have been asked if you will join as one of the counsel. Local counsel will handle all details.

I trust you can give me an affirmative answer.

Cordially,

CARL RACHLIN
General Counsel

CR/cs
Enc.

Mahy Form

August 11, 1965

Leo Pfeffer, Esq.
American Jewish Congress
15 East 84th Street
New York, New York

Dear Leo:

Enclosed is a copy of the libel complaint against civil rights and community groups in Newark. I have been asked if you will join as one of the counsel. Local counsel will handle all details.

I trust you can give me an affirmative answer.

Cordially,

CARL RACHLIN
General Counsel

CR/cs
Enc.

AUG 16 1965

LAW OFFICES
KADITUS & HELFGOTT

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SOUTH ORANGE, N. J. 07079

763-7630
AREA CODE 201

CARL J. KADITUS
CHARLES B. HELFGOTT

August 12, 1965

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row
New York 38, N.Y.

Re: MARTINEZ -vs- CORE, etal

Dear Mr. Rachlin:

On August 10, 1965 I prepared an Ex-parte Order and Affidavit and presented both to the Essex County Court for an extension of time for Mr. Farmer and CORE, a New York corporation to file its answer in the above matter. The Judge would not sign the Ex-parte Order, but he advised me to present a Notice of Motion and Affidavit to the Court on Friday, August 13, 1965, and at that time relief would be granted after argument of counsel.

Ordinarily, five days notice to my adversary is required for a motion, but the Judge waived the five day notice and I immediately prepared a Notice of Motion, new Affidavit and Notice of Mailing, and forwarded the same special delivery, certified mail to my adversary Mr. D'Alessandro. Motion will be argued Friday morning, at which time I have no doubt of prevailing. The Judge was very disgruntled over the conduct of Mr. D'Alessandro in not granting the extension of time, and as I was leaving the Judge's chambers, he was in the process of calling Mr. D'Alessandro to redress him for such conduct.

Enclosed please find a photostatic copy of Notice to take Oral Depositions of Mr. Farmer, Reverend Cantrell, and examination of all records of CORE, a New York corporation. The timeliness of this notice, dated one day before Mr. Farmer had to answer the complaint, and the same day in which Mr. D'Alessandro refused to grant an extension of time, only confirms our opinion that he, and undoubtedly others behind him are using harrassing tactics. This will be made known to the Court tomorrow. The date of the deposition in the notice is September 17, 1965 which I believe will be far to early for our preparation of the deposition. I will send both the Court and Mr. D'Alessandro and the attorney for Reverend Cantrell a letter next week stating that I will be unavailable for deposition on September 17th, and request a new, later date.

You will be advised of the new date for Mr. Farmer and CORE to answer the complaint.

Best regards,

Carl

Carl J. Kaditus

CJK/dma
enclosure

August 16, 1965

Denison Ray, Esq.
Cravath, Swain, & Moore
1 Chase Manhattan Plaza
New York, New York

Dear Mr. Ray:

Mr. Rachlin is currently out of town, but he has asked me to send you a copy of the complaint in Martinez v. CORE which you will find attached.

Mr. Rachlin thinks the complaint will be of interest to you, and invites any comment you care to make.

Yours truly,

Michael Kupersmith
Legal Assistant

M E M O R A N D U M

TO: James Farmer

FROM: Carl Rachlin August 31, 1965

RE: Martinez v. CORE, Farmer, et. al

Dick Debevoise, one of the finest civil liberties attorneys in New Jersey, and who has gone south for LCDC, has agreed to represent National CORE and James Farmer in the above libel case. I have been meeting regularly with attorneys out there and other attorneys will be representing various individuals who are also involved in the case. Obviously all will be cooperating together.

Debevoise has asked me for the following:

No

1) Was there any correspondence between National CORE and Newark-Essex CORE with regard to any of the demonstrations in Newark and Mr. Farmer's participation?

ictate to Nancy

2) Debevoise would like a memorandum from Mr. Farmer which would include a summary of how the arrangements were made for Mr. Farmer to come to Newark; all the things he did in connection with the demonstration, and what he stated, both publicly to any rally and to any smaller group or groups of people.

3) Debevoise would like a copy of the Newark chapter's By-laws and the CORE Constitution, as well as any other document from NAC Steering Committee or Convention minutes which show the independence of the chapter and its right to conduct its own activities.

CR/cs

cc: Messrs. Gartner, Wiley

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
TELEPHONE 623-1900
AREA CODE 201

RIKER
LES DANZIG
TT M. SCHERER
D J. BROWN
LM HOYT
SON R. DEBEVOISE
M I. RIKER
D F. CASSELMAN
M C. CONNELLY
WEISS
N. PERRETTI, JR.

September 8, 1965

Edward G. D'Alessandro, Esq.
Friedman & D'Alessandro
1180 Raymond Boulevard
Newark 2, New Jersey

Re: Martinez v. Congress of
Racial Equality, et al.

Dear Mr. D'Alessandro:

Enclosed please find a copy of a Substitution of Attorney and of the Answer of Congress of Racial Equality and James Farmer in the above matter.

I understand that arrangements are being made as to the dates for taking depositions. I am engaged in the Chancery Division on September 17th, when you noticed Mr. Farmer for deposition and, therefore, I will be in touch with you concerning a mutually agreeable date in the near future.

Sincerely,

Dickinson R. Debevoise

DRD:JAF
Encs.

cc Max Mehler, Esq.
Thomas L. Parsonnet, Esq.
Milton Yormark, Esq.
Carl J. Kaditus, Esq.
Carl Rachlin, Esq.

Certified Mail
Return Receipt Requested

[enclosed, Debevoise to D'Alessandro,
1965, September 8]

So far as I know, there was no correspondence between the National Office of CORE and the Newark Essex CORE chapter regarding the incident of alleged police brutality involving Patrolman Martinez of Newark in June. I heard of the case a few days after it happened when I returned to the City of New York and was briefed by staff on what had transpired and on the fact that Newark Essex CORE had announced that I would be invited to lead protest demonstrations at some appropriate time.

Subsequently, I held a press conference in the national office of CORE on June 21st at 2:00 o'clock to discuss a number of matters, including the alleged police brutality incident involving Martinez. My recollection is that at that press conference I stated that we believed it to be an unjustified killing. I noted also that ~~the~~ Mayor Adonizzio had suspended the patrolman in question pending an investigation and had expressed concern at the contradictory statements coming from the Police Department relative to the incident. The first statement from the police asserted that it was an accidental shooting, the patrolman having tripped andfallen and his gun having gone off accidentally. The second statement being that the deceased had pulled a knife on the patrolman while in the patrol car, slashed him, gotten out of the car and run, and that the policeman shot him to prevent his escape. I quoted the mayor as saing that the patrolman apparently took aim and shot to kill.

At the press conference I also confirmed that I was holding myself in readiness to go to Newark when called upon to do so by the Newark-Essex chapter. A few days before Wednesday, July 21st, I was notified by phone by the CORE people in Newark that they would like me to lead a march and speak at a rally in Newark centered around the demand for a civilian review board in the wake of the Martinez case on the date of July 21st. I agreed to do so. Tthis was, as I recall, after Martinez had been cleared by ~~the~~ a grand jury.

Prior to the 21st I received a number of calls from the press asking me to confirm that I would be in Newark to lead a march and speak at a rally aimed at a civilian review board. I confirmed same. On the day before the march, July 20th, the press called to seek a response from me to the fact that Newark CORE had received phone calls threatening my life on the 21st. My response was that this was routine and prosaic and death threats have become a way of life for people active in the civil rights movement and that I was not particularly concerned. When asked if I planned to carry body guards I stated that I considered the protection of citizens exercising their constitutional rights to be the responsibility of the Police Department of the city involved.

This concludes my recollection regarding the case.

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102

TELEPHONE 623-1900
AREA CODE 201

RVING RIKER
CHARLES DANZIG
EVERETT M. SCHERER
EDWARD J. BROWN
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WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

SEP 10 1965

September 8, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of
Racial Equality, et al.

Dear Carl:

Enclosed is a copy of the answer which we are serving upon Mr. D'Alessandro in the above matter. Also enclosed is a copy of my letter to Mr. D'Alessandro.

It would be helpful if you would send to me the following:

1. A memorandum of Mr. Farmer's recollection of everything he knows concerning the Newark situation and all his actions and conversations concerning the police incident;

2. A copy of the certificate of incorporation of CORE;

3. A copy of the by-laws of CORE;

4. Briefs, memoranda and any other helpful material prepared in connection with the Gilligan case in New York or in connection with any similar cases.

I hope all is going well.

Sincerely,

Dick

DRD:JAF
Encs.

September 13, 1965

Dickinson R. Debevoise, Esq.
Riker, Danzig, Scherer & Brown, Esqs.
744 Broad Street
Newark, New Jersey 07102

RE: Martinez v. CORE

Dear Dick:

Thank you for your letter of the 8th of September. I have already spoken to Jim Farmer as to a memo from him. He tells me there is no correspondence on the subject. I will remind him again of the memo.

I enclose, pursuant to your request (a) CORE certificate of incorporation (b) CORE Constitution and By-laws.

I will send you any memorandum to be prepared by Dennison Ray of Cravath, Swaine & Moore, who is working on the Gilligan case. Thank you for all you are doing.

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
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HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

SEP 17 1965

September 16, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Dear Carl:

Thank you for sending me the documents. The Constitution and By-laws refer repeatedly to the CORE rules for action. Would you be able to let me have a copy of that instrument.

Sincerely,

Dick

DRD:JAF

RIKER, DANZIG, SCHERER & BROWN
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744 BROAD STREET
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HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

September 16, 1965

To Counsel in the Martinez Case:

It has been suggested by several of the defense attorneys in the Martinez case that there should be a conference of all such attorneys for the purpose of coordinating our efforts.

Such a meeting will be held at 4:00 p.m. at my office (Room 1405) on Wednesday, September 22, 1965.

Dickinson R. Debevoise

Martyes v CORE

SEP 22 1965

Farmer

COMMISSION ON RELIGION AND RACE

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST in the U.S.A.

475 RIVERSIDE DRIVE, NEW YORK, N. Y. 10027 telephone: 870-2438

BISHOP REUBEN H. MUELLER, PRESIDENT R. H. EDWIN ESPY, GENERAL SECRETARY

ROBERT W. SPIKE
EXECUTIVE DIRECTOR

September 21, 1965

Carl Rachlin, Esq.
General Counsel
Congress of Racial Equality
38 Park Row
New York, N. Y. 10038

Dear Carl:

Now that the immediate summer rush is over and the challenge has been put to rest, I am in the process of pulling out piles of material and answering letters that should have been answered months ago.

On August 11 you asked if I would join you as counsel in the defense of the libel complaint growing out of Newark. I wish I could say yes, but at this particular time the pressure of other business here will make it impossible for me to give any kind of attention to the case and I would prefer not to be associated with it unless I could do my fair share.

Warmest regards,

Jack

John M. Pratt
Counsel to the Commission

JMP:bs

IRVING RIKER
CHARLES DANZIG
EVERETT M. SCHERER
EDWARD J. BROWN
MALCOLM HOYT
DICKINSON R. DEBEVOISE
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PETER N. PERRETTI, JR.

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
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October 8, 1965

Max Mehler, Esq.
744 Broad Street
Newark 2, New Jersey

Carl J. Kaditus, Esq.
111 South Orange Avenue
South Orange, New Jersey

Irvin L. Solondz, Esq.
790 Broad Street
Newark, New Jersey

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of Racial Equality, et al.

Gentlemen:

I am serving fairly detailed interrogatories upon Friedman & D'Alessandro exploring the details of the alleged conspiracy referred to in Counts One, Six and Seven of the Complaint.

As I understand it, before 40 days from the filing of his answer has expired, Carl Kaditus will prepare and serve detailed interrogatories as to all the details of the shooting and as to all the details of the police investigation and the Human Rights Council investigation which followed it. The interrogatories will also cover the matter of the handbills and the alleged statements.

I also understand that Irvin is making a detailed investigation of the factual data relating to the shooting and the police investigation in preparation for his civil action. This investigation will be supplemental to all the work which he has already done in this regard.

As we agreed at our conference on September 23rd, since Max has priority on depositions, if any attempt is made to take the deposition of any defendant, we will alert Max and he will insist upon his priority to take plaintiff's deposition.

Sincerely,

Dick

DRD

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VILLIAM I. RIKER
OWARD F. CASSELMAN
VILLIAM C. CONNELLY
LVIN WEISS
ETER N. PERRETTI, JR.

November 12, 1965

Max Mehler, Esq.
744 Broad Street
Newark 2, New Jersey

Irvin L. Solondz, Esq.
790 Broad Street
Newark, New Jersey

Carl J. Kaditus, Esq.
111 South Orange Avenue
South Orange, New Jersey

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress
of Racial Equality, et al.

Gentlemen:

I noticed in the most recent issue of U. S. Law Week that the court in the Gilligan case has ruled that a policeman is a "public offical" within the meaning of the rule announced in the New York Times case. The court declined to dismiss the complaint on the basis that there are questions of fact. The citation is 34 U. S. Law Week 2243.

Sincerely,

DRD

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WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

November 26, 1965

Mr. Robert L. Walker
Ames 227
Cambridge 38, Massachusetts

Re: Martinez v. Congress of
Racial Equality, et al.

Dear Mr. Walker:

COPY

I appreciate very much your letter of November 2, 1965, and the offer of research assistance it contained. I am sure all of the defendants would welcome your committee's help.

The names of the parties are set forth in the caption of the complaint, a copy of which is enclosed. All of the parties are from Newark, New Jersey, except Congress of Racial Equality and James Farmer, whose address is 38 Park Row, New York City.

In addition to the copy of the complaint which is enclosed, I enclose a copy of CORE's and James Farmer's answer, which is similar to the other answers which have been filed, and a copy of interrogatories which I have served but which have not been answered. No depositions have yet been taken.

In general, the complaint arises out of the shooting of a Negro by the plaintiff on June 12, 1965. Following the shooting, tension in the City became very high. The local CORE organization investigated the incident very intensively, interviewing witnesses and taking other steps to discover the facts. Some of the circumstances appeared suspicious, including the fact that the police first announced that the shooting was accidental and then changed their story to claim that the decedent had pulled a knife upon the police officer who was interrogating him in a patrol car and attempted to flee, at which time he was shot.

The local CORE leaders sought to interest other groups in the matter, and a special meeting was called of Newark Citizens for Community Action (NCCA). This is an informal group consisting of clergymen, welfare agency people, civil rights leaders and other community leaders who meet periodically in attempts to formulate a united approach to particularly difficult problems in the City. In the past it had stimulated the organization of the poverty program, it had worked to prevent a drastic cut in the education budget, and it organized a short-lived program of citizen's police observers.

At the special meeting of NCCA called at local CORE's request, the local CORE people gave a detailed description of the results of their investigation. They described the unusual tension caused by the fact that the plaintiff was still assigned to the area where the shooting took place. NCCA voted to ask for a conference with the Mayor, to call for the suspension of plaintiff until the facts could be ascertained, and to ask for an investigation. I believe NCCA also asked for creation of a civilian review board.

Acting for NCCA, Arnold Harris requested the meeting which was held the following day. The situation was still extremely tense, and local CORE was threatening to picket unless plaintiff were suspended. After a heated session, the Mayor suspended plaintiff. Later he stated that it was only a "technical suspension" involving transfer to a different post and no loss of pay.

The police organizations then started picketing, drawing pickets from many areas in New York and New Jersey. The Newark Human Rights Commission reviewed the matter, apparently hearing largely police witnesses and not from the local CORE people. They exonerated plaintiff. Thereupon the Mayor reinstated plaintiff, and the police picketing was stopped. The Essex County Grand Jury heard the matter, and no indictment was returned against plaintiff.

In the meantime, local CORE undertook an extensive campaign for a civilian review board. They were aided by various other organizations, and they organized several marches and rallies to further this purpose.

Local CORE contacted national CORE and asked for help in its campaign for a civilian review board. James Farmer agreed to hold himself in readiness to go to Newark when called upon to do so. A few days before July 21st, Mr. Farmer was notified by telephone by the CORE people in Newark that they would like him to lead a march and speak at a rally which was designed to further the proposal of a civilian review board. He came to Newark, led the march and spoke at a rally. At that time he was served with a summons and complaint in the pending action.

Some local people prepared and distributed the documents attached to the complaint prior to some of the parades. The purpose was undoubtedly to arouse interest in the parades. The circumstances of the preparation and distribution of the leaflets are not yet clear. National CORE and James Farmer and NCCA and Arnold Harris had no knowledge of their existence until service of the suit papers. We do not believe that local CORE knew of or authorized the leaflets, although the person who prepared them may have been a member of local CORE. Some of the people who distributed the leaflets were not local CORE members; some may have been local CORE members.

You will observe, therefore, that there are several classes of defendants, having some common legal problems and some different ones. Issues which immediately present themselves include the following:

(i) Are citizens and citizens' organizations absolutely privileged to urge a mayor to suspend a police officer without regard to whether or not the mayor has the legal power to suspend such officer? If not, does a qualified privilege exist?

(ii) Is plaintiff a "public official" so as to bring the statements contained in the leaflets within the rule of the New York Times case (see 34 U.S. Law Week, p. 2176, 34 U.S. Law Week, p. 2243)?

(iii) What must a plaintiff who is a public official show in order to establish that a statement is malicious so as to remove the protections of the New York Times case?

(iv) To what extent is the question of malice a jury question and to what extent may or must a judge supersede a jury's determination on the question of malice?

(v) Referring to Counts One and Two of the complaint which allege interference with economic opportunity, has the plaintiff suffered any compensable damages if it is shown that he has not suffered any economic loss?

(vi) If National CORE exercises no control over the actions of its local chapters other than the establishment of general policies, is it responsible under the circumstances of this case for the actions of its local chapters should such actions make the local chapter liable in tort?

(vii) Are local CORE and/or its officers liable to plaintiff if it should be found that the leaflets were libelous and not privileged but that local CORE and/or its officers did not know that the leaflets were being prepared and used by members of local CORE (an unincorporated association) to create interest in the parade and rally sponsored by local CORE?

You may well develop additional issues and refinements of the above issues. I think the most helpful approach would be for you to prepare a general discussion of the legal issues, giving the various lines of authority rather than writing a document in the nature of a brief.

As to time, it would be helpful if we could have the results of your work by the end of February. We are in the very early stages of this case, but, by March, there may be enough factual data available through discovery to enable us to consider whether a motion for summary judgment as to all or part of the complaint may be in order.

Many thanks for your help.

Sincerely yours,

DRD:JAF
Encs.

cc Max Mehler, Esq.
Carl J. Kaditus, Esq.
Irvin L. Solondz, Esq.
Carl Rachlin, Esq.

LAW OFFICES
FRIEDMAN & D'ALESSANDRO
1180 RAYMOND BOULEVARD
NEWARK, N. J. 07102

MITCHELL 2-0240

EDWARD G. D'ALESSANDRO
KALMAN FRIEDMAN

RALPH B. SUSSMAN
LOUIS M. MINOTTI

Danzig, Scherer & Brown
DEC 6 1965

December 3, 1965

REPLY TO FILE NO.
3488

Dickinson Debevoise, Esq.
Riker, Danzig, Scherer & Brown, Esqs.
744 Broad Street
Newark, New Jersey

Re: Martinez vs. Congress of Racial Equality, et al

Dear Mr. Debevoise:

Kindly advise me as to when you will have Mr. Farmer available for the taking of his depositions and the production of records referred to in my Notice to Take Oral Depositions.

Thank you for your anticipated courtesy.

Very truly yours,

FRIEDMAN & D'ALESSANDR.

By

Edward G. D'Alessandro

EGD:MK

Edward G. D'Alessandro

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102

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WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

December 6, 1965

Max Mehler, Esq.
744 Broad Street
Newark 2, New Jersey

Re: Martinez v. Congress of
Racial Equality, et al.

Dear Max:

Enclosed is a copy of a letter which I received from Mr. D'Alessandro. As between him and me, I think I am obligated to arrange for Mr. Farmer to come to Newark to have his deposition taken. You may be in a position to insist upon interrogating Martinez first, although I am not sure of that at this point.

Would you let me have your thoughts on the matter?

Sincerely,

Dick

DRD
Enc.

cc Carl J. Kaditus, Esq.
Carl Rachlin, Esq.

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
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WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

DEC 22 1965

December 21, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of Racial Equality, et al.

Dear Carl:

Enclosed are a copy of a Demand for Admissions which has been served upon us and a copy of the Interrogatories which has been served upon us.

Would you be able to review the Demand for Admissions with Mr. Farmer very promptly so that we can prepare answers. I shall telephone you either at the end of this week or early next week so that we can determine in what manner we should reply. We must answer in time, or else the matters will be deemed admitted, and I am sure that many refinements are required in at least some of the statements.

With respect to the interrogatories, I intend to move to strike questions 6, 7, 8 and 12, although it may be that the interrogatory concerning the assets and income of the defendants will be permitted as bearing upon the question of the amount of punitive damages. Would you review each question with Mr. Farmer and send me a draft of answer within the next week or so. I shall probably wish to add to his answers and will, of course, review the final form before submitting them to the attorney for the plaintiff.

Best Wishes for the Holiday Season.

Sincerely,

Dick

DRD:JAF
Encs.

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102

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DICKINSON R. DEBEVOISE
WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR

December 29, 1965

Friedman & D'Alessandro, Esqs.
1180 Raymond Boulevard
Newark 2, New Jersey

Re: Martinez v. Congress of
Racial Equality, et al.

Gentlemen:

Enclosed please find a copy of a Notice of Motion to Strike Interrogatories.

I believe the answers to the interrogatories which we served upon you on October 8th are now due. I would appreciate your forwarding them in the very near future.

Sincerely,

DRD
Enc.

cc Max Mehler, Esq.
Carl J. Kaditus, Esq.
Thomas L. Parsonnet, Esq.
Milton Yormark, Esq.

Certified Mail
Return Receipt Requested

LAW OFFICES
FRIEDMAN & D'ALESSANDRO
1180 RAYMOND BOULEVARD
NEWARK, N. J. 07102

MITCHELL 2-0240

EDWARD G. D'ALESSANDRO
KALMAN FRIEDMAN

RALPH B. SUSSMAN
LOUIS M. MINOTTI

Riker, Danzig, Scherer & Brown
RECEIVED
JAN 20 1966

January 16, 1966

REPLY TO FILE NO.
3488

Riker, Danzig, Scherer & Brown, Esqs.
744 Broad Street
Newark 2, New Jersey

Att: Dickinson R. Debevoise, Esq.

Re: Martinez vs. Congress of
Racial Equality, et al

Dear Mr. Debevoise:

I am in receipt of your communication of December 29, 1963 and apologize for not answering same sooner but I was not in town.

I am in the process of preparing answers to Interrogatories. However, I shall not forward them to you until I have completed my discovery. If you will recall, it was I who served a Notice to take the depositions on Mr. Farmer first and I would be entitled to complete my discovery prior to you receiving yours. Immediately upon the taking of depositions of Mr. Farmer, I will supply you with answers to Interrogatories.

Very truly yours,

FRIEDMAN & D'ALESSANDRO

Edward G. D'Alessandro

By: Edward G. D'Alessandro

EGD:BDP

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102

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WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR

COPY

January 21, 1966

Edward G. D'Alessandro, Esq.
Friedman & D'Alessandro
1180 Raymond Boulevard
Newark, New Jersey

Re: Martinez v. Congress of Racial Equality, et al.

Dear Mr. D'Alessandro:

This will acknowledge receipt of your letter of January 16th.

I know of no rule which permits a delay in answering interrogatories by reason of the fact that depositions or any other form of discovery are going on. You will recall that I arranged with Mr. Farmer to be in Newark in January and that, for your convenience, I made a new date in February, as you planned to be away on a trip.

Please be advised that, if the interrogatories are not answered within ten days of the date of this letter, I intend to proceed as provided in the rules.

Sincerely,

Dickinson R. Debevoise

DRD

cc Max Mehler, Esq.
Carl J. Kaditus, Esq.
Carl Rachlin, Esq.

Send copy to Nancy

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
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VING RIKER
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ALCOLM HOYT
CKINSON R. DEBEVOISE
LLIAM I. RIKER
OWARD F. CASSELMAN
LLIAM C. CONNELLY
VIN WEISS
ETER N. PERRETTI, JR.

December 22, 1965

Edward G. D'Alessandro, Esq.
Friedman & D'Alessandro
1180 Raymond Boulevard
Newark 2, New Jersey

Re: Martinez v. Congress of Racial Equality, et al.

Dear Mr. D'Alessandro:

This will confirm that we have set down the deposition of Mr. Farmer for 10:30 a.m. on February 8, 1966.

Sincerely,

Dickinson R. Debevoise

DRD:JAF

cc Max Mehler, Esq.
Carl J. Kaditus, Esq.
Carl Rachlin, Esq.

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
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WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

COPY

February 2, 1966

Friedman & D'Alessandro, Esqs.
1180 Raymond Boulevard
Newark 2, New Jersey

RE: Henry Martinez v. Congress of Racial Equality, et al., Docket No. A-9503

Gentlemen:

Enclosed is a copy of Notice of Motion to Dismiss or to Compel Answers to Interrogatories, in the above-entitled matter.

Very truly yours,

Martin Murphy
For the Firm

MM:SG
Enclosure
CERTIFIED MAIL RRR

c.c.: Max Mehler, Esq.
Carl J. Kaditus, Esq.
Milton Yormark, Esq.
Carl Rachlin, Esq.

Martinez
✓ Farmer

MEMORANDUM

TO: Alan Gartner

FROM: Carl Rachlin February 4, 1966

Our Newark lawyers must be able to know precisely what Jim Farmer said at a news conference here in the office at the time of the big demonstrations in Newark last June or July. I hate to bother you with this but I don't know where to turn. It is needed for the libel suit in Newark.

Thanks.

CR/cs

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
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WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

MAR 14 1966

March 11, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of Racial Equality, et al.

Dear Carl:

Have you had any luck in locating a transcript of the press conference given by Mr. Farmer which appears to figure so prominently in plaintiff's thinking?

Sincerely,

Dick

DRD:JAF

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
TELEPHONE 623-1900
AREA CODE 201

IRVING RIKER
CHARLES DANZIG
EVERETT M. SCHERER
EDWARD J. BROWN
MALCOLM HOYT
DICKINSON R. DEBEVOISE
WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR

March 31, 1966

Mr. Robert L. Walker
Ames 227
Harvard Law School
Cambridge 38, Massachusetts

Re: Martinez v. Congress of Racial Equality, et al.

COPY

Dear Mr. Walker:

I want to express very deep appreciation to you and to Messrs. Roth, Paksarian and Lowenstein for preparing for me and for the other defense counsel in this case the memorandum of law which I received today. I am sending copies to the attorneys listed below, and I know that all of us are going to find it extremely helpful. I have not yet reviewed it, but I shall do so in the near future and will try to give you my comments.

The case is proceeding in the normal manner. Mr. Farmer's deposition has been taken and disclosed little, except that he was invited to speak in Newark and did speak there. We have served interrogatories upon Officer Martinez and have obtained a court order compelling him to answer the very substantial number of those interrogatories which he either refused to answer or answered inadequately. We have also been served with interrogatories by Officer Martinez. They were few in number, and we succeeded in having several of them stricken by court order.

Mr. Mehler, who represents Arnold Harris, one of the defendants, is now preparing to take Officer Martinez' deposition.

We shall certainly keep you advised as to the progress of the case.

Sincerely yours,

DRD:JAF

cc Max Mehler, Esq.
Carl J. Kaditus, Esq.
Carl Rachlin, Esq.

June 21st, 1965

box 247

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
TELEPHONE 623-1900
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HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR

APR 6 1966

April 5, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of Racial Equality, et al.

Dear Carl:

Enclosed are an original and six copies of Supplemental Answer to Interrogatory in the above case. Would you arrange to have Mr. Farmer sign each at the place indicated, and would you arrange to have an officer of CORE sign each at the place where indicated. The original and all but one copy should be returned to me for filing with the court. We are under a time limit here, and I would appreciate it if this could be expedited.

We have never received a transcript of the press conference which was the subject of much of the questioning on Mr. Farmer's deposition. This assumes considerable importance in the case insofar as Mr. Farmer and CORE are concerned, and I think every effort should be made to get that to us as soon as possible.

I hope all is going well.

Sincerely,

Dick

DRD
Encs.

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
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HOWARD F. CASSELMAN
WILLIAM C CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR

MAY 9 1966

May 5, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of Racial Equality, et al.

Dear Carl:

Enclosed is a copy of plaintiff's Demand for Admissions in the above matter. Apparently they are quoted from a television interview held on June 21, 1965. It seems to me that all of the statements attributed to Mr. Farmer are perfectly reasonable. I think, however, the actual transcript should be checked so that the accuracy of the quotations can be determined.

After you have done that, will you complete the blanks in the enclosed affidavits which I shall attach to the Demand for Admissions and have them executed by the appropriate persons and return them to me no later than May 20th.

Sincerely,

Dick

DRD:JAF
Encs.

May 27, 1966

Mrs. Lula Farmer
165 Park Row
New York, New York

Dear Lula:

Please have Jim get in touch with me. Jim is out of town so much these days that I never know when he is in town. But I must have him sign some papers Mr. Debevoise sent over in the Martinez v. CORE case. Please let me know what his schedule is.

Sincerely,

CR:tp

Carl Rachlin
General Counsel

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
TELEPHONE 623-1900
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WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR

JUN 8 1966

June 7, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

RE: Martinez v. Congress of Racial Equality, et al.

Dear Carl:

I would really appreciate having a prompt reply to the following matters raised in this letter:

1. On April 5th I sent you an original and six copies of supplemental answers to interrogatories in the above case with the request that Mr. Farmer sign on his own behalf and that CORE execute it on its behalf. We are well beyond the time set forth in the court order for filing this answer, and I would like to take care of the matter promptly.

2. On May 5th I sent you plaintiff's demand for admissions, asking that certain blanks be completed and that it be executed by the appropriate persons and returned to me no later than May 20th. I have obtained an agreement from Mr. D'Alessandro that we may have until such time as you can review the statement which I enclose, but I would like the admissions executed and returned to me at this time.

3. Enclosed is a copy of a notice of motion brought by plaintiff seeking an order permitting the taking of the deposition of the custodian of records of NBC. I have arranged for a continuance of the hearing and have agreed with Mr. D'Alessandro that if you and Mr. Farmer confirm that the enclosed statement is an accurate transcription of what Mr. Farmer said, we would stipulate the authenticity of the statement without the necessity of taking depositions to prove it. Would you let me know promptly whether the statement is accurate? Frankly, I think it is an extremely moderate statement and is one which I would like to have in the record in its entirety.

I do wish that you and I could come to some form of arrangement whereby I could get responses from my communications to you. I know that the pressure of events is sometimes overwhelming, but I am sure everyone's life would be simpler if matters could be attended to in the normal course.

Sincerely,

Dick

DRD:JAF
Encs.

JUL 12 1966

[illegible]
[illegible] AVENUE
[illegible]

July 11, 1966

Friedman & D'Alessandro, Esqs.
1180 Raymond Boulevard
Newark, New Jersey 07102

Attention: Edward J. D'Alessandro, Esq.

RE: Martinez vs. [illegible], et al

Dear Mr. D'Alessandro:

Pursuant to our telephone conversation on this day, it is my understanding that Depositions of Andrew Washington, Robert Curvin, Fred Means, Charles A. Tuller and Thomas Edwards have been postponed from July 13th until Wednesday, July 27, 1966 at your office.

All other attorneys have been notified of this change by telephone and by carbon copies of this letter.

Thank you for your kind cooperation.

Very truly yours,

Carl J. Kaditus

CJK/dma

cc: Parsonnet & Parsonnet, Esqs.
Riker, Danzig, Scherer & Brown, Esqs.
Milton Yormark, Esq.
Max Mehler, Esq.
✓ Carl Rachlin, Esq.

LAW OFFICES
CARL J. KADITUS

111 SOUTH ORANGE AVENUE
SOUTH ORANGE, N. J. 07079

763-7630
AREA CODE 201

JOHN E. WEINHOFER

COPY

July 19, 1966

File

Friedman & D'Alessandro, Esqs.
1180 Raymond Boulevard
Newark, New Jersey 07102

Attention: Edward G. D'Alessandro, Esq.

RE: Martinez v. CORE, et al

Dear Mr. D'Alessandro:

Pursuant to our telephone conversation yesterday and oral notice this morning, please be advised that my clients, Mr. Curvin and Mr. Tuller will be represented by another attorney in the future. They are now in the process of selecting that attorney, and you will be notified of the substitution as soon as possible.

Since a new attorney is entering the case it would not be considerate of me to take the deposition of Mr. Martinez and then turn the file over to him. A new attorney would probably require an additional deposition of your client which may cause an unnecessary inconvenience. I have also notified Mr. Washington and Mr. Means of this change in attorneys and they will notify me shortly whether I will continue to represent them or whether they too will be represented by the same attorney as Mr. Curvin and Mr. Tuller.

Please be advised that these four litigants reserve their right to take the deposition of Mr. Martinez and rights to all other discovery. I have also notified the above defendants that the plaintiff intends to take their depositions on July 27, 1966 at 10:00 A.M. Your professional consideration during this transition will be greatly appreciated.

Very truly yours,

Carl J. Kaditus

CJK/dma
cc: Dickinson R. Debevoise, Esq.
Carl Rachlin, Esq.
Andrew Washington
Robert Curvin
Fred Means
Charles A. Tuller

Phone: MArket 2-6644-5-6

PLEASE REFER TO OUR
INVOICE № 39124

NEWARK 2, N. J. August 4, 1966

Henry Martinez

vs.

Congress of Racial Equality,
etc., et al.

TO **KABOT, BATTAGLIA & HAMMER** DR
CERTIFIED SHORTHAND REPORTERS
NOTARIES PUBLIC
24 COMMERCE STREET
NEWARK 2, N. J.

Riker, Danzig, Scherer & Brown, Esqs.,
744 Broad St.,
Newark, N. J.

REPORTER B. Meeks

7-19-66	Attendance at: Newark, N. J.	$ 20.00
	Transcript: Deposition of Henry Martinez: 343 folios @ 60¢	205.80
		$225.80

Distribution of Transcript: Original to be filed with Court; copy herewith; copy to Friedman & D'Alessandro, Esqs.

ACCOUNT TO BE CHARGED:

ORDERED BY:
RECEIVED BY:
EXTENSION CHECKED BY:
PAYMENT APPROVED BY:
DATE PAID CHECK NO.

PLEASE RECEIPT
AND RETURN

AUG 20 1966

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
TELEPHONE 623-1900
AREA CODE 201

RVING RIKER
HARLES DANZIG
VERETT M. SCHERER
DWARD J. BROWN
ALCOLM HOYT
ICKINSON R. DEBEVOISE
VILLIAM I. RIKER
OWARD F. CASSELMAN
VILLIAM C. CONNELLY
LVIN WEISS
ETER N. PERRETTI, JR.

August 16, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of
Racial Equality, et al.

Dear Carl:

Enclosed is the bill which we received from the reporter who transcribed the deposition of Henry Martinez. I would appreciate it if your office would pay it directly.

The deposition discloses that we should take the testimony of a police officer who was in charge of investigating and acquiring data concerning the events of June and July, 1965, all of which apparently have been made available to the plaintiff. We should also take the deposition of the police director. I trust that CORE is willing to assume these expenses.

I hope all is going well.

Sincerely,

Dick

DRD:JAF
Enc.

Martinez
v
CORE

September 2, 1966

Dickinson, Debevoise, Riker, Danzig
Scherer and Brown, Esqs.
744 Broad Street
Newark, New Jersey, 07102

Dear Dick:

Since I addressed my earlier letter to you, I have learned that the NAACP has only one copy of the brief which they are lending me and are requiring that I leave my blood as security. I promised them I would photocopy it and return it to them promptly. I hope to have it within the next day or so and then will forward to you. Perhaps you can Xerox it and return it.

By the way, can you have one of your young men over at the legal services program read the propsed articles of incorporation of the Legal Services of Northern Florida, Inc. for suggestions and corrections as to make certain that it meets with the proper standards since you people have already had experience in that regard.

Sincerely yours,

Carl Rachlin
General Counsel

CR/vh

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102

TELEPHONE 623-1900
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HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

October 28, 1966

Hon. Lawrence A. Whipple
Hall of Records
Newark, New Jersey

Re: Martinez v. Congress of
Racial Equality, et al.
Docket No. A-9503

Dear Judge Whipple:

Enclosed is a memorandum on behalf of defendants, Congress of Racial Equality and James Farmer, in the above matter, which I am filing, as requested by you last week.

A copy of this letter and a copy of the memorandum are being sent to the attorneys for each of the other parties and to the attorneys for Father Everett.

Respectfully yours,

Dickinson R. Debevoise

DRD:JAF
Enc.

cc Friedman & D'Alessandro, Esqs.
Frohling & Gaulkin, Esqs.
Clapp & Eisenberg, Esqs.
Thomas L. Parsonnet, Esq.
Milton Yormark, Esq.
Frederick J. Gassert, Esq.

[Debevoise to Whipple, 1966, October 28]

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A-9503

HENRY MARTINEZ,	)	
Plaintiff,	)	Civil Action
vs.	)	
CONGRESS OF RACIAL EQUALITY, a New York corporation, et al.,	)	
Defendants.	)	

MEMORANDUM OF LAW ON BEHALF OF DEFENDANTS, CONGRESS OF RACIAL EQUALITY AND JAMES FARMER

DICKINSON R. DEBEVOISE, ESQ.
Attorney for Defendants,
Congress of Racial Equality
and James Farmer
744 Broad Street
Newark, New Jersey

ESSEX COUNTY COURT
LAW DIVISION
DOCKET NO. A-9503

HENRY MARTINEZ,)
Plaintiff,) Civil Action
vs.)
CONGRESS OF RACIAL EQUALITY,)
a New York corporation, et)
al.,)
Defendants.)

MEMORANDUM OF LAW ON BEHALF OF DEFENDANTS, CONGRESS OF RACIAL EQUALITY AND JAMES FARMER

STATEMENT OF FACTS

This memorandum is submitted with respect to the question as to whether a court has the power, authority or jurisdiction to stay the transcript of the deposition of The Reverend Seymour B. Everett, recently taken in this cause. A brief recital of the facts is in order.

The action was instituted by plaintiff, a Newark police officer, against Congress of Racial Equality and James Farmer, upon whose behalf this memorandum is submitted, CORE Newark Essex Chapter, and certain individuals.

The complaint sets forth seven counts, each allegedly arising out of an incident involving plaintiff "which eventually caused the decease of one Lester Long."

Count One alleges that, on June 17, 1965, at the office of the Mayor of Newark, the Congress of Racial Equality, James Farmer and various other defendants, in accordance with a prearranged conspiracy, maliciously and illegally demanded plaintiff's suspension, resulting in injury to plaintiff. Count Two alleges that the conduct of defendants alleged in Count One was wilful, malicious and wreckless.

Counts Three, Four and Five allege that defendants Tuller, Curvin and Means, respectively, slandered plaintiff at a street meeting held on June 16, 1965.

Count Six alleges that prior to June 16, 1965, Congress of Racial Equality, CORE Newark Essex Chapter and defendants Means, Curvin and Farmer conspired and agreed to publish a document (a copy of which accompanied the complaint) which defamed plaintiff and that defendants Powell, Jones, Means and Curvin "delivered" said document, which was read by a number of people, injuring plaintiff.

Count Seven alleges that prior to June 23, 1965, Congress of Racial Equality, CORE Newark Essex Chapter and defendants Means, Curvin and Farmer conspired and agreed to publish another document (a copy of which accompanied the complaint) which defamed plaintiff and that defendants Powell, Jones, Means and Curvin "delivered" said document, which was read by a number of people, injuring plaintiff.

Discovery was undertaken in the case, and prior to the deposition which is the subject of this memorandum, a number of motions had been filed and were pending relating to discovery, amendment of the complaint and the production of documents and a tape recording. Prior to arguing said motions, plaintiff sought to take the deposition of The Reverend Seymour B. Everett, Pastor of Blessed

Sacrament Church, along with several other depositions, and notices to that effect were served upon the defendants.

Plaintiff served Father Everett with a subpoena entitled in the cause directing him to appear and give testimony at the office of Friedman & D'Alessandro, Esqs., 1180 Raymond Boulevard, Newark, New Jersey, on Friday, October 7, 1966, at 11:00 a.m. "on the part of plaintiff, Henry Martinez, in the above entitled matter."

Accompanying the subpoena served upon Father Everett was an affidavit, also entitled in the cause, executed by Angelo Palmisano, Jr. The affidavit refers to a conference held on Friday, September 9, 1966, at the offices of Friedman & D'Alessandro at which Mr. D'Alessandro and Father Everett were present. The affidavit attributes to Father Everett statements concerning (i) the meeting in Mayor Addonizio's office regarding the Martinez matter, (ii) statements made at that meeting by defendant Robert Curvin, (iii) Father Everett's statements on several occasions in the past to Mr. D'Alessandro as to his signing an affidavit and testifying in court with respect to Mr. Curvin's remarks and (iv) Father Everett's changing his mind and declining to testify unless compelled to.

The deposition of Father Everett proceeded on October 7, 1966, as scheduled. Plaintiff's attorney

(Mr. Scalera, who was substituting for Mr. D'Alessandro) questioned Father Everett about the events which occurred in the Mayor's office and also about other matters relating to the case. The questioning was extensive.

Thereafter, attorneys for various of the defendants cross-examined Father Everett. It is the recollection of the attorney for Congress of Racial Equality and James Farmer that the substantial portion of the cross-examination proceeded without objection by plaintiff's attorney. As to certain matters, objections were set forth by plaintiff's attorney, sometimes directed to the relevancy and materiality of the matter inquired into and sometimes directed to the form of the question. At no point, however, did plaintiff's attorney deem it necessary to halt the deposition and seek any form of relief from the Court, as he was entitled to do at any point under the Rules.

The undersigned is of the opinion that every question posed by him on cross-examination was relevant to the subject matter involved in the pending action. Cross-examination on depositions is not limited to the subject matter of the examination in chief (R.R. 4:16-3), but the undersigned can recall no question posed by him which was not directly related either to the examination in chief or to the material in the affidavit served by plaintiff along with his subpoena.

After the deposition was completed, plaintiff moved for an "Order physically deleting and striking any and all testimony of Reverend Seymour B. Everett given on depositions on October 7, 1966, at the offices of Friedman & D'Alessandro as same was immaterial, irrelevant, impertinent, irregular, scurrilous, scandalous, indecent, defamatory and highly unethical." Plaintiff also moved "to have the notes of the stenographer physically destroyed and exponged (sic) as well as any and all notes of the attorneys present at said depositions and for an Order of the Court restraining any and all attorneys present from using said testimony or repeating same, as same would be in violation of R.R. 4:11 ..." Plaintiff asked that the reporter be present at the time of argument to be held in camera to report to the Court what transpired at the depositions.

Certain of the defendants made requests to the Court with respect to plaintiff's motion, and the Court directed an initial inquiry as to its power, authority or jurisdiction to stay the transcript of the deposition. This memorandum is directed to that question.

ARGUMENT

POINT I.

ONCE A DEPOSITION HAS BEEN TAKEN, IT IS MANDATORY UNDER THE RULES THAT IT BE TRANSCRIBED, UNLESS THE PARTIES AGREE OTHERWISE.

It is important to note the status of Father Everett's deposition in this case. His testimony has already been completed, but the transcript has not yet been made or filed. The rule applicable at this point is R.R. 4:20-3 which reads, in part, as follows:

> "The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed on a typewriter unless the parties agree otherwise...."

Every authority of which we are aware has held that this portion of the rules is mandatory. In Schnitzer & Wildstein, New Jersey Rules Service, the following appears as Comment, Section 4B, to the above quoted rule:

> "The testimony must be taken 'stenographically', which means in the form of questions and answers, and transcribed on a 'typewriter,' unless the parties by stipulation agree otherwise. See Comments 1 and 4 to Tentative Draft Rule 3:30-3."

Waltzinger, Vol. 2, New Jersey Practice Series, notes with respect to Comment 1 to the Tentative Draft Rule referred to above as follows:

> "1. This is [in substance] Federal Rule 30(c), except that the words 'on a typewriter' have been added [and the 3d and 4th sentences are a modification of the Federal Rule]. Thus (in contrast to R.S. 2:100-6) typewritten transcripts are made mandatory unless the parties agree otherwise."

The Federal Courts have construed the parallel Federal Rule requiring that the testimony be transcribed to be mandatory. This interpretation has been voiced in opinions dealing with the question of whether a party taking a deposition must have it transcribed at his own expense if the other party insists upon it. In one case, Odum v. Willard Stores, Inc., 1 F.R.D. 680 (Del. 1941), the Court refused to order a plaintiff to transcribe the deposition of one of the defendants and his wife unless the defendant was willing to advance the cost of transcribing. The case does not, however, question the mandatory nature of the requirement of transcription and dealt only with the question of the cost. In the case of Burke v. Central-Illinois Securities Corp., 9 F.R.D. 426 (Del. 1949), the Court ordered the deposing party to have his deposition transcribed, certified and filed. The Court's reasoning was that the language of the rules is mandatory and that the cost of having the deposition transcribed must be borne by the party at whose instance the deposition was taken.

Commenting upon the two cases cited above, *Moore, Federal Practice*, Vol. 4, stated: "The decision in the *Burke* case represents a sound construction of the rules as now drafted." It should be noted that in the above cases and in certain other cases cited in paragraph 30.17 of the supplement to Volume 4, it was assumed that transcription of the deposition was mandatory and that the only question was as to who was to pay the cost.

The rules as to protective orders do not relate to the transcription of depositions.

R.R. 4:20-2 provides that after a notice is served for taking a deposition upon oral examination, upon motion seasonably made by a party or by the person to be examined, the Court may issue an order containing appropriate protective provisions. This is a procedure which is designed to provide protection before depositions have commenced and not after they have been completed. In the present case, of course, the depositions were held at the instance of the plaintiff himself, and for this additional reason this rule has no bearing.

R.R. 4:20-4 provides that at any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Court may take appropriate protective action. Specifically that rule states that, "Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order." That rule is designed to provide protection during the course of the taking of a deposition and not after the deposition has been completed. Under its provisions, plaintiff could have terminated the deposition of Father Everett at any time during the course thereof. It is submitted that it is highly significant that no such move was made.

R.R. 4:20-6 contains directions as to the certification of the deposition by the officer who took it and as to the filing of the deposition with the Court. By implication, it recognizes the authority of the Court to regulate the use of the deposition once it is filed. The rule states, "Upon being filed, the deposition shall be open to inspection, unless otherwise ordered by the court." (emphasis added). This rule, however, is applicable only after the deposition has been transcribed and does not affect the requirement that the deposition be transcribed in the first instance.

Apart from the rules of the Court, it seems clear that a deposition is a public record and that even though it was not taken in a court room, it is a part of the official records of the case.

The seriousness with which the state regards the protection of public records is suggested by N.J.S.A. 2A:136-1, which provides criminal penalties for stealing, altering, falsifying, mutilating or otherwise mishandling a public record.

N.J.S.A. 47:3-9 sets forth specific provisions for the removal and destruction of certain records. It provides, in part, as follows:

> "The following are the papers which may be removed and destroyed or the records therein effectively obliterated pursuant to the provisions of this act:
>
> " * * * * *
>
> "(k) Depositions, which are not within the scope of any applicable court rule and which do not pertain to any pending court action or proceeding, after ten years;"........

As a matter of fact, the rules of Court do provide for the destruction of depositions in 4:20-6(a) which states, "After final termination of the case on request the clerk of the county shall return the deposition to the party taking it and, if not so requested, 3 years after final termination of the case the clerk of the county shall destroy the deposition, unless the court otherwise orders."

The situation in the present case should amply illustrate why a deposition must be transcribed once it has been completed before any protective orders can be issued. In the present case plaintiff asserts that the testimony given by a witness called by himself is scandalous, defamatory and irrelevant, among other things. The defendants, on the other hand, who attended the deposition, listened while plaintiff's attorney questioned the witness and then cross-examined the witness, contend that the testimony is not only relevant but of critical importance in the case. Unless the Court has before it the testimony in question and unless the attorneys for the various parties have access to it so that they can study it and carefully prepare the presentation of their position, it would be impossible to rule upon the question raised. It is respectfully submitted, therefore, that the transcription of the testimony is required not only by the language of the rules but also by the necessities of the situation.

POINT II.

THE AUTHORITIES RELIED UPON BY PLAINTIFF DO NOT SUPPORT HIS CONTENTION THAT THE DEPOSITION SHOULD NOT BE TRANSCRIBED.

R.R. 1:27:A provides that the rules "may be relaxed or dispensed with by the court in any instance *where it shall be manifest* to the court that a strict adherence to them *will work surprise or injustice*." (emphasis added). It is submitted that this general rule relied upon by plaintiff has no application to the present situation.

In the first place, plaintiff's moving papers make nothing "manifest" to anyone. There is no supporting affidavit, and the only hint of plaintiff's reasons for his motion is the general characterization of Father Everett's testimony which appears in the notice of motion.

Further, in the situation as it now stands, injustice will be caused to the defendants if they cannot obtain a transcript of the deposition. Plaintiff, not defendants, instituted this deposition, and it is clear from the affidavit which plaintiff served with the subpoena that Father Everett has knowledge of the subject matter of the controversy which plaintiff's attorney sought to elicit both on the deposition and on other occasions in the past. It is defendants' opinion that the testimony given by Father Everett both on direct examination and on cross-examination was relevant to the issue in the case and important in preparation of the defense. A denial of the opportunity to have a transcript of that testimony would be an injustice to defendants and would deny to them the opportunity for a fair hearing guaranteed both by the 14th Amendment of the United States Constitution and the laws of New Jersey.

The cases applying R.R. 1:27A are set forth in Waltzinger's annotations to the rule, New Jersey Practice Series, Vol. 1. It is clear that the situations where the rules are relaxed are those involving purely formal steps which do not concern the substance of the controversy, as would be the case here. For example, the rules as to the time of performance of certain acts or as to the waiver of a jury trial have been relaxed. No cases are noted which bear any relation to plaintiff's request that a deposition not be transcribed.

The specific rules relied upon by plaintiff simply have no application. R.R. 4:11 relates to pleadings (not transcripts of depositions) and permits disciplinary action against an attorney who inserts scandalous or indecent matter in a pleading. R.R. 4:12-6 gives the Court authority to strike from a pleading any redundant, immaterial, impertinent, or scandalous matter. On oral argument in this case, plaintiff referred to R.R. 4:16-1, which simply provides for the taking of depositions and seems to have nothing to do with the issue at hand. As noted in Point I above, R.R. 4:20-2 permits application for a protective order, but it is aimed at the situation prevailing before the deposition commences and does not give authority for an order staying the transcription of a deposition which has already been taken.

It is significant to note that in the two rules cited above relating to matters contained in pleadings, the Court is in a position to take action only when the material to which objection is taken is before the Court and the parties. In the case at hand, the plaintiff seeks to prevent transcription of material which is not available to the Court and to the parties.

Similarly, the cases cited by plaintiff do not govern the question now under consideration.

The case of Brown v. Bulkley, 14 N.J. Eq. 294 (Chan. 1862) involved the old equity procedure and held that a plaintiff may not attack or deny the credibility of a defendant by impeaching his general character for truth and veracity. The Court also stated that, as a general rule, under then applicable law, there was no special advantage in suppressing testimony as incompetent or irrelevant in advance of hearing, but that depositions, when objected to as taken upon leading interrogatories, or as scandalous or for some irregularity in relation to them, are suppressed prior to hearing. Those matters are now covered by the rules of the Court, and even in the situation referred to in the Brown case there was no question of staying the transcription of depositions.

Plaintiff cited certain other cases which involve the striking of briefs filed with the Court on the grounds that the briefs contained material which was impertinent, scandalous and contemptuous, reflecting either on counsel or the Court below, Epstein v. Kuvin, 23 N.J. Super. 482 (App. Div. 1952) (impugning the motives of the trial judge); Reitemeyer v. Reitemeyer, 140 N.J. Eq. 393 (E. & A. 1947) (impugning the motives and conduct of the Chancellor and Advisory Master); In re Glauberman, 107 N.J. Eq. 384 (E. & A. 1930) impugning the motives and conduct of the trial judge); and Bennett v. Piatt, 85 N.J. Eq. 602 (E. & A. 1916) aspersions upon the character of counsel). In each of those situations, however, the Court and counsel had before it the material which was considered to be improper, and a ruling on the merits was possible. That is totally different from staying the transcription of a deposition to which one side objects and which the other side considers important to the merits of the case.

Plaintiff also cited Corpus Juris Secundum, Vol. 26A, Depositions, Secs. 85 and 86. Those sections relate to the suppression of depositions (not to the staying of transcriptions of depositions) and to retaking of depositions. It is submitted that the sections do not bear upon the question now before the Court.

Plaintiff, therefore, has offered no authority to support its position that the transcription of Father Everett's testimony be stayed.

CONCLUSION

For the reasons set forth above, the Court is urged to deny a stay of the transcription of the deposition recently taken in this cause.

Respectfully submitted,

DICKINSON R. DEBEVOISE
Attorney for Defendants,
Congress of Racial Equality
and James Farmer

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
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PETER N. PERRETTI, JR.

November 4, 1966

Hon. Lawrence A. Whipple
Hall of Records
Newark, New Jersey

Re: Martinez v. Congress of
Racial Equality, et al.
Docket No. A-9503

REPLY MEMORANDUM

Dear Judge Whipple:

I respectfully request that I be allowed to reply to the plaintiff's Memorandum of Law by means of this letter. Inasmuch as a substantial portion of that Memorandum is directed to actions on my part which plaintiff considers to be unethical and unprofessional, I would prefer to reply in the first person.

First, permit me to break "the thunderous silence of defendants' counsel" as to plaintiff's charges that defense counsel have violated the Canons of Professional Ethics. I have deliberately refrained from commenting on the wild and hysterical statements which plaintiff's counsel has seen fit to disseminate in the course of oral argument before the Court, in various letters mailed to counsel and now in his Memorandum of Law. I have refrained not because I am embarrassed by the charges, but because I am embarrassed for plaintiff's attorney.

It seems to be plaintiff's thesis that the interrogation of Father Everett and the testimony of Father Everett constituted a personal attack upon plaintiff's counsel. I submit that such was not the case and that the testimony (and the questions evoking such testimony) were directed to factual data relating to the issues of the case. Certain of that factual data consisted of statements and conduct by plaintiff's attorney, but such statements and conduct are a part of this case. I recall no instance during the course of the deposition where Father Everett sought to cast judgment upon that attorney's actions or to impugn his character. He simply stated what he heard and what he saw. I am firmly of the opinion that all of those observations are relevant, although, of course, that is a determination which must ultimately be made by the Court.

Let me make it perfectly clear that neither in the course of the depositions nor now did I or do I make any charges or attacks upon the character or professional conduct of plaintiff's attorney. This is neither the time nor the place for such charges. Since, however, plaintiff's attorney persists in the charges of misconduct on my part, I can only request that the transcript of the deposition be furnished not only to the Court and counsel but also to the proper organs of the Bar, so that the charges can be considered and upheld or dismissed.

In the Memorandum of Law which I previously submitted on behalf of defendants, Congress of Racial Equality and James Farmer, I deliberately refrained from presenting my recollection of the testimony given by Father Everett, partly because I did not wish to risk inaccuracies and partly because I did not wish to disclose the material until after the Court had ruled on plaintiff's motion.

Plaintiff, however, has seen fit in his Memorandum to set forth a description of that testimony, characterizing it in lurid terms. Plaintiff's statements concerning the testimony are so grossly inaccurate that I feel I must comment and give my best recollection of certain phases of the testimony.

Plaintiff's Memorandum first states (on pages 2 and 3) that except for questioning as to Father Everett's recollection of events that occurred prior to a meeting in Mayor Addonizio's office, the interrogation centered around what actually occurred at the meeting. Plaintiff conveniently forgets the fact that Father Everett was served with a subpoena which was accompanied by an affidavit prepared in plaintiff's attorney's office. The affidavit involved matters other than the meeting in the Mayor's office, such as Father Everett's statements to plaintiff's counsel on occasions in the past, Father Everett's friendship with one of the defendants, Robert Curvin, and Father Everett's refusal to give plaintiff's attorney a voluntary statement. Plaintiff also conveniently forgets that his own attorney on direct examination inquired into the matter of conversations Father Everett had had with the parties to the action. In any event, on deposition, cross-examination is not limited to the subject matter of the examination in chief, (R.R. 4:16-3).

After inaccurately suggesting that the direct examination was limited to events which took place at the meeting in the Mayor's office, plaintiff states (on page 3), "The cross-examination of the witness was begun by Mr. Debevoise who immediately started to center his cross-examination on meetings which the witness had had with Mr. D'Alessandro at which time Mr. D'Alessandro had requested that the witness sign a statement concerning the witness' version of the meeting held in the Mayor's office."

Although I rely on recollection, I think the statement quoted above is totally incorrect. Before the deposition was held, I prepared pencil notes (which I still have) setting forth the subjects concerning which I planned to interrogate Father Everett. I firmly believe I followed my notes during cross-examination.

The first matter I went into was the meeting in the Mayor's office, to cover points not made clear on direct examination.

This included the discussions concerning the two versions of the shooting which were issued to the press and the Mayor's dissatisfaction with the explanations of the shooting.

I then, if my memory is correct, sought a chronological recital of all conversations Father Everett had had with plaintiff's attorney. The first of those conversations took place almost immediately after the meeting in the Mayor's office, at a time when fear and hatred were rising dangerously in the City. Two hostile forces faced each other, the Patrolmen's Benevolent Association which was mounting a huge picket line consisting largely of police officers, wives and children, and civil rights groups which were protesting what appeared to them to be an unnecessary shooting. This was the situation in which the incidents of the present case unfolded. The actions and motives of the parties to this action are going to have to be judged in the light of these conditions. Plaintiff's attorney was counsel for the Patrolmen's Benevolent Association, and Father Everett held conversations with him concerning these critical events. Those were the second subject of my inquiry on cross-examination.

I then inquired into subsequent conversations Father Everett had with plaintiff's counsel, during which it became clear that the nature and purpose of the present action are very different from what they purport to be.

Only then, if my memory is correct, did I inquire into conversations which Father Everett had with plaintiff's attorney concerning the signing of a statement for use in the action. In particular, I wished to inquire into the accuracy of the affidavit which plaintiff himself served on Father Everett along with the subpoena. Father Everett testified as to the inaccuracies contained in the affidavit. The reason why plaintiff considers the circumstances and content of an affidavit captioned in the pending cause and prepared in his own attorney's office to be beyond reach of cross-examination by me escapes me altogether.

I believe that after the inquiry into the conversations between Father Everett and plaintiff's counsel, I interrogated Father Everett about events in the community following the shooting and the meeting in the Mayor's office. Father Everett's parish is in the heart of a very poor slum area. He personally observed such events as the police picketting and reactions in his community. At the moment I cannot recall whether or not he testified that he observed the actions of certain of the defendants.

On page 4 of plaintiff's Memorandum there is a statement I am prepared to state almost categorically is false. The Memorandum reads, "This unwarranted and unethical attack was compounded when Mr. Mytelka took over the cross-examination of the witness. It then became apparent to Mr. Scalera that there had been a previous discussion concerning this area between Mr. Debevoise, Mr. Mytelka and the witness." (emphasis added).

In the first place, there was no "attack" on plaintiff's attorney. In the second place, it was not during Mr. Mytelka's cross-examination that it "became apparent to Mr. Scalera that there had been a previous discussion," etc. Unless Mr. Scalera failed to listen during my cross-examination, he learned of such previous discussions during that cross-examination. I deliberately asked Father Everett to describe the conferences he had had with me and Mr. Mytelka. I did that so that we could make short shrift of the kind of nonsense that appears on page 4 of plaintiff's Memorandum.

The record will speak for itself as to Mr. Yormark's cross-examination, comments and actions. I have no knowledge about Mr. Yormark's remarkable change of position after the taking of the deposition, and if the statements in this regard set forth in plaintiff's brief are true, I can only note that Mr. Yormark's conduct is most curious.

One final note as to plaintiff's summary and characterization of the deposition: The one obvious course to take is to match plaintiff's summary against the transcript, and then we can see what really was said and done.

Plaintiff's Memorandum makes certain allegations (unsupported by affidavit or otherwise) as to incidents purportedly occurring apart from the deposition of Father Everett.

At page 2, plaintiff attributes to Mr. Mytelka the statement that it had occurred to Mr. Mytelka to go to the Mayor and prevail upon him to have plaintiff dismiss the suit. I did not hear that conversation, but Mr. Mytelka and I had discussed the possibility of suggesting to the Mayor that he invite the parties and their attorneys to meet with him to see if the suit could be resolved. Our reason for considering this approach was that the case can only reopen hostilities in the community that could be unhealthy. It is inconceivable to me that Mr. Mytelka would have expressed this thought in the manner alleged in plaintiff's Memorandum.

On page 6 of the Memorandum, plaintiff refers to several "ideas" which were conveyed to plaintiff's attorney during conversations with defense counsel after the taking of Father Everett's deposition, all of them unsupported by affidavit or other evidence.

One of the "ideas" was that if the entire suit were dropped, consent would be given to destroying the depositions. That is entirely correct insofar as my conversations with Mr. Scalera were concerned. I tried to make it very clear to him that if the case were to continue, Father Everett's deposition would be important to my clients' case, but that if the case were dismissed, I had no further interest in the deposition and would be glad to consent to its destruction. That is still my position.

The second "idea" gleaned by plaintiff was the thought that the information contained in the deposition would reach the press. I frankly do not remember whether Mr. Scalera and I discussed possible publicity which might follow filing of the deposition, but I know of no defense attorney who has any desire to publicize the testimony or to do anything other than use it in the defense of this case.

The third "idea" referred to by plaintiff is that one of the defendants (unidentified) requested a copy of the transcript so as to discredit plaintiff's attorney in the eyes of the Patrolmen's Benevolent Association. I have no knowledge of any such request, and I am sure no defense counsel in this case would countenance the use of the deposition for any such purpose.

Insofar as plaintiff's legal authorities are concerned, I refer to the Memorandum which I previously filed.

In conclusion, I respectfully suggest that the only way to resolve the question of the relevancy and materiality of the deposition and the only way in which defense counsel can meet the very serious charges of unethical conduct which plaintiff's attorney so glibly casts about is to have the deposition transcribed and made available to the Court and all counsel.

Respectfully submitted,

DICKINSON R. DEBEVOISE
Attorney for Defendants,
Congress of Racial Equality
and James Farmer

DRD:JAF

cc Friedman & D'Alessandro, Esqs.
Frohling & Gaulkin, Esqs.
Clapp & Eisenberg, Esqs.
Thomas L. Parsonnet, Esq.
Milton Yormark, Esq.
Frederick J. Gassert, Esq.

Mart v
CORE

November 7, 1966

Dickinson R. Debevoise, Esq.
Riker, Danzig, Scherer & Brown
744 Broad Street
Newark, New Jersey 07102

Dear Dick:

I am very upset about the attacks made upon you by Friedman & D'Alessandro and I insist that you tell me what you would like me to do in your behalf. I consider this outrageous, not only because I know you and therefore know how untrue any charges of such kind made against you would be, but you have also told me what has happened in this case, and if anything, the unethical conduct seems to lie at the door of Friedman & D'Alessandro pushing vindictive litigation.

With warm personal regards.

Sincerely,

Carl Rachlin
General Counsel

CR:ns

RIKER, DANZIG, SCHERER & BROWN
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ALVIN WEISS
PETER N. PERRETTI, JR.

November 9, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of
Racial Equality, et al.

Dear Carl:

Thank you very much for your generous letter of November 7th. I appreciate your sympathy and concern. Frankly, I am not at all bothered by the attacks, as I know they are unjustified and in fact are strengthening our position. I did not send you a copy of D'Alessandro's brief, which will make good reading.

As soon as the transcript is typed, I shall want to discuss with you the possibility of filing a counterclaim based upon malicious abuse of process.

I hope all is going well.

Sincerely,

DRD:JAF

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
LAWRENCE A. WHIPPLE
JUDGE

COURT HOUSE
NEWARK 2, NEW JERSEY

LETTER OPINION
NOT FOR PUBLICATION

November 22, 1966

Edward G. D'Alessandro, Esq.
1180 Raymond Boulevard
Newark, N. J. 07102

Clapp & Eisenberg, Esqs.
744 Broad Street
Newark, N. J.

Frohling & Gaulkin, Esqs.
744 Broad Street
Newark, N. J.

Milton Yormark, Esq.
786 Broad Street
Newark, N. J.

Thomas L. Parsonnet, Esq.
1060 Broad Street
Newark, N. J.

Frederick J. Gassert, Esq.
830 Broad Street
Newark, N. J.

Dickinson R. Debevoise, Esq.
744 Broad Street
Newark, New Jersey

Nicholas Scalera, Esq.
24 Commerce Street
Newark, N. J.

Re: Martinez v. Congress of Racial Equality, als.
Docket No. A-9503

Gentlemen:

This matter is before the Court on a motion by the plaintiff for an order physically deleting and striking any and all testimony of the Reverend Seymour B. Everett given in depositions on October 7, 1966, and for an order to have the stenographic notes of said deposition physically destroyed and expunged as well as any and all notes of the attorneys present at said deposition, and for an order restraining any and all attorneys present from using said testimony or repeating same as same would be in violation of R.R. 4:11, and further the movant requests that the reporter, Robert Meeks, be present at the time of argument to report to the Court what transpired.

Oral argument was heard on October 31, 1966 and briefs were requested by the Court on the limited question as to whether or not this Court has the authority and/or power and/or jurisdiction to stay the transcript of depositions recently taken in this cause.

After considering the various arguments, this Court finds that it does have the power, authority and jurisdiction to stay the transcript of depositions, R.R. 4:20-2. The exercise of this power remains a most delicate question.

Due to the alleged nature of the transcript, and the importance of the contentions of the various parties, this Court cannot blindly come to a decision. The Court must have an opportunity to see the transcript and examine it.

For the reasons stated, it is ordered that Robert Meeks, the stenographic reporter at this deposition, and his employer, Kabot, Battaglia and Hammer, certified shorthand reporters, prepare one copy of the testimony of Reverend Seymour B. Everett given in depositions on October 7, 1966 at the offices of Friedman and D'Alessandro, Esqs. This single copy shall be placed under seal and be delivered to this Court within one week of receipt of this order. It is further ordered that Robert Meeks and Kabot, Battaglia and Hammer are to make no more than one copy of said transcript, and the contents of same are not to be divulged to anyone, and the said copy of said transcript to be delivered to the Hon. Lawrence A. Whipple personally.

It is further ordered that the parties to this action, their attorneys, the Reverend Seymour B. Everett and his attorney, and their designated representatives shall hold in confidence and disclose to no one any portion of the conversations made at the above-mentioned depositions whether encompassed in the transcript or not.

It is further ordered that the attorneys appearing before this Court in this cause may, upon appointment, inspect the contents of the above-mentioned transcript in this court. The transcript may not be removed from this court.

All other relief with respect to this deposition is hereby denied until further order of this Court.

The Court's ruling on this motion is not dispositive of any other motion pending in this cause.

Submit an appropriate order.

Very truly yours,

Lawrence A. Whipple

LAWRENCE A. WHIPPLE
J.S.C.

LAW:prb

RIKER, DANZIG, SCHERER & BROWN
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WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

November 23, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of Racial Equality, et al.

Dear Carl:

Enclosed is a copy of a letter I am sending to Stephen Schlakman.

I think that, in order to be on the safe side, you should return to me the copy of my letter to him which I sent to you on November 18th.

Sincerely,

Dick

DRD:JAF
Enc.

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WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

November 23, 1966

Mr. Stephen Schlakman
915 West End Avenue
New York, New York

Re: Martinez v. Congress of
Racial Equality, et al.

COPY

Dear Stephen:

Enclosed is a copy of Judge Whipple's determination to date with respect to the plaintiff's motion in the above case. You will note that he has required that a single transcript be prepared and filed with him under seal for examination.

The order will also provide that no one shall disclose any portion of the conversations made at the deposition. In view of that ruling, I would suggest that you return to me the letter which I sent to you on November 18, 1966, without making any copies of it and that you or any person working with you for the legal staff of CORE not disclose any of the data which was in that letter. Technically, I think that you would be within the category of an attorney for the parties, since you are working for Carl Rachlin, who is counsel for CORE, but I think we should limit the dissemination of the information at this time.

I would suggest that you copy the legal questions which I set forth on page 3 of my letter of November 18th, as I think they can still be researched, although expressed in general terms.

Sincerely,

DRD:JAF
Enc.

cc Carl Rachlin, Esq.

Martinez ✓ CORE

November 30, 1966

Dickinson R. Debevoise, Esq.
Riker, Danzig, Scherer & Brown
744 Broad Street
Newark, New Jersey 07102

Dear Dick:

I herewith return to you the copy of the letter to Stephen Schlakman dated November 18, 1966, which you had sent to me. Stephen Schlakman' will be in later today and I will instruct him to return the original to you at that time. I am very much concerned about you in this matter and I wonder whether you ought not have counsel in view of some of the things that D'Alessandro has said. And frankly I don't think that you should make the decision on whether you should or should not have counsel. Have you discussed this with other attorneys? If so, what is their advice on this point?

With warm personal regards,

Carl Rachlin
General Counsel

CR:ns
Enclosure

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WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

December 5, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of Racial Equality, et al.

Dear Carl:

I deeply appreciate your personal concern for my protection in the above matter. My co-counsel, Arnold Mytelka (who is the subject of charges similar to those D'Alessandro has made against me) has discussed the situation with his senior partner, Alfred C. Clapp, who is a former State Senator and a former judge of the Appellate Division. Judge Clapp agrees with us that the charges are patently ridiculous. My own thought is to wait and see what the judge does at the hearing of the motion on the balance of the relief requested by plaintiff. I think at that time we will be in a position to determine whether or not additional counsel will be advisable.

It seems to me that the charges which had been made provide us with an additional reason why the tape cannot be destroyed, as both Arnold and I can insist that this matter be presented to the Ethics Committee. If we had to fall back on such a reason, I think we would need separate counsel to argue the position. In any event, I will keep you informed and welcome any suggestions you have.

Enclosed is a copy of the latest order entered in this matter which gives us about two weeks from now to argue the balance of plaintiff's motion.

Sincerely,

Wick

DRD:JAF
Enc.

DEC 13 1966

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WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

December 9, 1966

Edward G. D'Alessandro, Esq.
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1180 Raymond Boulevard
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Thomas L. Parsonnet, Esq.
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Milton Yormark, Esq.
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786 Broad Street
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Arnold K. Mytelka, Esq.
Clapp & Eisenberg
744 Broad Street
Newark, New Jersey

Frederick J. Gassert, Esq.
Gassert, Murphy & Gassert
830 Broad Street
Newark, New Jersey

Re: Martinez v. Congress of
Racial Equality, et al.

Gentlemen:

Yesterday I was informed by Judge Whipple's office that the transcript of Father Everett's deposition had been filed. I was also informed that, in view of the approaching Christmas recess, the motion now directed to the transcript will be heard on the first motion day after the first of the year.

Sincerely,

Dickinson R. Debevoise

DRD:JAF

cc A. John Blake, Esq.

IRVING RIKER
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December 27, 1966

Hon. Lawrence A. Whipple
Hall of Records
Newark, New Jersey

Re: Martinez v. Congress of
Racial Equality, et al.
Docket No. A-9503

Dear Judge Whipple:

I have received a copy of Mr. D'Alessandro's letter of December 23rd to you.

Oral argument seems to be necessary, and I hope we shall have the opportunity of presenting such an argument in addition to filing briefs.

Respectfully yours,

Dickinson R. Debevoise

DRD:JAF

cc Friedman & D'Alessandro, Esqs.
Frohling & Gaulkin, Esqs.
Clapp & Eisenberg, Esqs.
Thomas L. Parsonnet, Esq.
Milton Yormark, Esq.
Frederick J. Gassert, Esq.

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WILLIAM C. CONNELLY
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PETER N. PERRETTI, JR.

December 30, 1966

Hon. Lawrence A. Whipple
Hall of Records
Newark, New Jersey

Re: Martinez v. Congress of
Racial Equality, et al.
Docket No. A-9503

Dear Judge Whipple:

Enclosed is a Memorandum of Law submitted on behalf of defendants, Congress of Racial Equality and James Farmer, in opposition to plaintiff's motion with respect to the deposition of Reverend Seymour B. Everett.

My understanding is that the matter has been set down for hearing on January 6th.

Respectfully yours,

Dickinson R. Debevoise

DRD:JAF
Enc.

cc Friedman & D'Alessandro, Esqs.
Frohling & Gaulkin, Esqs.
Clapp & Eisenberg, Esqs.
Parsonnet & Parsonnet, Esqs.
Zarin, Yormark & Maran, Esqs.
Gassert, Murphy & Gassert, Esqs.

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WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

January 12, 1967

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of
Racial Equality, et al.

Dear Carl:

Enclosed is a copy of a statement for the taking of depositions of Henry Martinez. I forwarded the original to you to be paid by CORE some time ago, and I hope very much that arrangements can be made to pay it at this time. As you know, this will become my personal obligation if CORE cannot attend to it.

I think this is some indication of the expenses which lie ahead if the matter is not settled and even if (as I am sure it will) the matter terminates successfully in our favor.

Sincerely,

Dick

DRD:JAF
Enc.

January 20, 1967

Floyd B. McKissick, Esq.
National Director, Congress
For Racial Equality
200 West 135th Street
New York, New York 10030

Re:Martinez v Congress Of Racial Equality
James Farmer et al

Dear Floyd:

I enclose a letter and expense statement (copy) from Dick Debevoise who is our lawyer in Newark and who is handling the above named case which you may know involves a libel suit against CORE, Jim Farmer, several people associated with CORE, including Bob Curbin, as well as miscellaneous people in the city of Newark for having called Martinez a murderer at one time during some major incident in Newark about a year and a half ago, in which in a street incident, a Negro man was killed by Martinez.

Dick Debevoise advises me that the case maybe disposed of for relatively a small sum not yet actually discussed seriously, which would involve participation by a lot of people and if agreed upon would involve probably a few hundred dollars by CORE. I told him I would be in touch with you in this regard. There is no question that if the case is not settled it would become very expensive not because of lawyers fees but because of out of pocket expenses such as the bill enclose from Debevoise and his letter. I would like to hear from you in this regard, obviously I will not undertake or suggest to him that he settle before hearing from you, negatively or positively. Warm personal regards

Sincerely,

CR:n/Encl (2)

Carl Rachlin
General Counsel

CONGRESS OF
CORE
RACIAL EQUALITY

working to create a society in which all men are equal

00 WEST 135th STREET
NEW YORK, N.Y. 10030
281-9650

Floyd B. McKissick
national director
Lincoln O. Lynch
associate director

OFFICERS
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Arthur Evans, Jr.
first vice-chairman
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ssistant general counsel
Don Smith
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Clora Coleman
comptroller

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Martin Luther King
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Fred M. Shuttlesworth
C. K. Steele
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Gardner Taylor
Bishop W. J. Walls
Goodwin Watson
Joseph Willen
Jerry Wurf
Charles S. Zimmerman

File Martinez v CORE

February 23, 1967

Carl Rachlin, Esq.
Scholarship, Education and Defense
  Fund for Racial Equality
150 Nassau Street
New York, New York 10038

Re: Martinez vs. Congress of Racial Equality, James Farmer et al

Dear Carl:

Thank you for your note of February 10 regarding the above mentioned.

We await your advice regarding the recommendation that SEDF pay court costs and in terms of conditions of settlement after you have completed your conference.

Very truly yours,

Floyd B. McKissick
National Director

FBMcK:ilh

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
TELEPHONE 623-1900
AREA CODE 201

IRVING RIKER
CHARLES DANZIG
EVERETT M. SCHERER
EDWARD J. BROWN
MALCOLM HOYT
DICKINSON R. DEBEVOISE
WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

June 13, 1967

Arnold K. Mytelka, Esq.
Clapp & Eisenberg
744 Broad Street
Newark, New Jersey

Re: ✓ Martinez v. Congress of Racial Equality, et al.

C O P Y

Dear Arnold:

As I mentioned to you yesterday on the telephone, Ed D'Alessandro informed me that his client is willing to dispose of the above action on the basis of the nominal payments already discussed and for an exchange of releases. The release of each defendant should name Mr. D'Alessandro as well as the plaintiff as a person benefiting from the release.

In addition to the release and payment, plaintiff asked for a statement retracting the charges made in the two flyers which are the subject of the suit. I enclose a form of statement which I have cleared with Carl Rachlin and which is acceptable to him. I think this form of statement has the advantage of being strictly factual, and my own feeling would be that it would be a matter of complete indifference whether it were published or not. It has not, of course, been cleared with the plaintiff or his attorney, and I shall not do that until I have heard from you.

Would you let me know as soon as you can whether or not the CORE representatives are willing to sign it.

Sincerely,

Dick

DRD:JAF
Enc.

cc Carl Rachlin, Esq.

, 1967

Officer Henry Martinez
13 Niagara Street
Newark, New Jersey

Dear Officer Martinez:

Reference is made to the action instituted by you in the Essex County Court against CORE Newark Essex Chapter, the undersigned and certain others and, in particular, to the copies of two flyers issued over the name of Newark-Essex CORE which are attached to the complaint as Exhibits A and B. The statements contained in the flyers resulted from reports concerning the shooting of Lester Long, Jr., which appeared in the daily press and which you have informed us were incorrect. The undersigned did not write the flyers, but we were officers or members of Newark-Essex CORE at the time and, on its behalf, we retract the statements made in the flyers and express our regret that they were distributed.

Very truly yours,

Robert Curvin

Fred Means

Charles A. Tuller

7-31 papers sent to
Geo. Schiffer
gn

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
TELEPHONE 623-1900
AREA CODE 201

IRVING RIKER
CHARLES DANZIG
EVERETT M. SCHERER
EDWARD J. BROWN
MALCOLM HOYT
DICKINSON R. DEBEVOISE
WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

June 19, 1967

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Martinez v. Congress of
Racial Equality, et al.

Dear Carl:

Enclosed are an original and two copies of forms of releases, one to be executed by James Farmer, and the other by national CORE. Also enclosed is a form of promissory note which I would appreciate your having executed by national CORE, if that is possible, in accordance with our telephone conversations of last week.

It would be most helpful if payment of our bill previously submitted and the execution and return of the enclosed documents could be effected very promptly, as I would like to have the settlement concluded before it becomes unglued.

Sincerely,

DRD:JAF
Encs.

RIKER, DANZIG, SCHERER & BROWN
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102
TELEPHONE 623-1900
AREA CODE 201

IRVING RIKER
CHARLES DANZIG
EVERETT M. SCHERER
EDWARD J. BROWN
MALCOLM HOYT
DICKINSON R. DEBEVOISE
WILLIAM I. RIKER
HOWARD F. CASSELMAN
WILLIAM C. CONNELLY
ALVIN WEISS
PETER N. PERRETTI, JR.

August 21, 1967

Carl Rachlin, Esq.
150 Nassau Street
New York, New York 10038

Dear Carl:

Enclosed is a duplicate of the bill which we submitted in connection with the Martinez case more than a year ago. I would appreciate it if this could be paid with notice to me of the fact of payment, otherwise I shall feel obligated to pay the reporter myself.

Sincerely,

Dick

DRD:edl
Enc.

MILLER, STEPHEN et al. vs STATE OF MISSISSIPPI, 1965

Box 39
Folder/3

Historical Society of Wisconsin

Please Retain Original Order

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

October 15, 1965

Mr. Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana, 70112

Re: No. 22403 - Stephen Miller, et al
-vs- State of Mississippi

Dear Sir:

I am authorized by this court to advise that your Suggestion for Summary Reversal was received and filed this 15th day of October, 19 65, and under the rules and practice of this Court will be presented for ruling without oral argument on or about November 1, 1965*, together with any response or opposition that may be filed by opposing counsel by that date.

Very truly yours,

Edward W. Wadsworth

EDWARD W. WADSWORTH,
Clerk

/bwc

cc: Mr. John Pratt
Mr. L. H. Rosenthal
Mr. Edmund A. Wilson
Mr. Albert Sidney Johnson, Jr.
Messrs. Boyce Holleman, Clyde Hurlburt and Gaston Hewes
Mr. Robert F. Collins
Mr. Carl Rachlin
Mr. Leo Pfeffer

* This is only the date on which it is now expected that the matter will be forwarded for ruling, and does not mean that this office will be able to advise counsel of the Court's action by then. Counsel should allow at least ten days' time thereafter for advice as to the Court's ruling before making inquiry.

U. S. COURT OF APPEALS
FILED
NOV 1 0 1965
EDWARD W. WADSWORTH
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 22403

STEPHEN MILLER, BARRY GOLDSTEIN and DAVID CLEVERDON,

Appellants,

v.

STATE OF MISSISSIPPI,

Appellee

Appeals from the United States District Court for the Southern District of Mississippi

---

(1965)

Before JONES and THORNBERRY, Circuit Judges, and SLOAN, District Judge

PER CURIAM:

The appeals of the appellants for an order of summary reversal of the judgment from which appeals have been taken are denied. The appellee's motion to dismiss the appeals is denied.

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

November 10, 1965

Mr. Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

Re: No. 22403 - Stephen Miller, Barry Goldstein
and David Cleverdon -vs- State of Mississippi

Dear Sir:

Enclosed is a copy of an order this day entered, which is self-explanatory.

I have been directed by the Court to advise that your brief must be filed promptly or the Court of its own motion will dismiss the appeal.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By G.F. Ganucheau
G. F. Ganucheau,
Deputy Clerk

/bwc
Enc.
cc: Mr. John Pratt
Mr. L. H. Rosenthal
Mr. Edmund A. Wilson
Mr. Albert Sidney Johnson, Jr.
Messrs. Boyce Holleman, Clyde Hurlbert and Gaston Hewes
Mr. Nils R. Douglas
Mr. Carl Rachlin
Mr. Leo Pfeffer

Miller

SMITH, WALTZER, JONES & PEEBLES
ATTORNEYS AND COUNSELORS AT LAW
Suite 1006 Baronne Bldg.
305 Baronne Street
525-4361
NEW ORLEANS, LA. 70112

BENJAMIN E. SMITH
BRUCE C. WALTZER
ALVIN B. JONES
JACK PEEBLES

ARTHEL J. SCHEUERMANN

Cable Address: PEPEN
Notary Public

December 28, 1965

Mr. Mel Wulf
American Civil Liberties Union
156 5th Avenue
New York, New York

Mr. Charles M. Morgan, Jr.
Director, Southern Regional Office
American Civil Liberties Union
5 Forsyth Street, Northwest
Atlanta, Georgia

Mr. Henry Schwartzchild
American Civil Liberties Union
156 5th Avenue
New York, New York

Kunstler, Kunstler & Kinoy
Attorneys at Law
511 5th Avenue
New York, New York

Gentlemen:

We need some help in covering court costs in the following cases and in the amounts indicated:

1.	City of Greenwood vs. Stokley Carmichael	$ 51.59
2.	State of Mississippi vs. Miller, et al	$ 352.67
3.	Peacock vs. City of Greenwood	129.33

Henry Schwartzchild has indicated that either LCDC or the INC fund or CORE would cover the costs of the printing of the Miller record. This letter should be considered the bill for that expense.

Carmichael and Peacock were COFO cases and are considered by us to be important enough to continue until resolved. Any help that any of you can give us on these expenses would be most appreciated.

In addition to these cases we really need printing costs for the record in Hancock and Glenn. This will run about $350.00. I had originally thought it would be $250.00 but this would be inadequate.

Very truly yours,

SMITH, WALTZER, JONES & PEEBLES

By
Benjamin E. Smith

BES/fs

cc: Mr. Carl Rachlin
Mr. Howard Moore
Mr. James Foreman
Mr. Lawrence Guyot

United States Court of Appeals for the Fifth Circuit.

NEW ORLEANS, LOUISIANA

Ordered that the following cases be assigned for hearing at NEW ORLEANS, LOUISIANA, in the Louisiana Wildlife & Fisheries Bldg., 400 Royal Street, on the days hereinafter named to-wit:

MONDAY, FEBRUARY 28, 1966

No. 22416. Aaxico Airlines, Inc. vs. Air Line Pilots Assn. International, et al.
No. 22105. James A. Jackson, trading as Jim Jackson vs. Sam Finley, Inc.
No. 22805. Robert T. Smith, et al. vs. The City of Jackson, Miss.
No. 22818. Greg Kaslo, et al. vs. City of Meridian, Miss.

TUESDAY, MARCH 1, 1966

No. 22238. Local No. 320, International Union of Operating Engineers, AFL-CIO vs. National Labor Relations Board.
No. 22239. Local Union No. 12, United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO vs. National Labor Relations Board.
No. 22686. United States of America vs. Thomas F. Lee and Wife, Ola Mae Lee, etc.
No. 22464. Junior Wesley Bernard vs. United States of America.

WEDNESDAY, MARCH 2, 1966

No. 21674. Standard Oil Co. (Kentucky) vs. Humble Oil & Refining Co.
No. 22764. Nathaniel Roebuck Beatty vs. J. O. Kearney, Warden, etc.
No. 22843. Lee C. Godfrey vs. R. P. Balkcom, Jr., Warden, etc.
No. 22914. Robert N. Rodriguez vs. H. L. Hanchey, Warden.

THURSDAY, MARCH 3, 1966

No. 22227. Columbus and Greenville Railway Co. vs. Commissioner of Internal Revenue.
No. 22126. Junior Pigott, et al. vs. Texaco, Inc., et al.
No. 22150. Dianne, Sandra and Sharon Williams, etc. vs. John W. Gardner, Secretary of Health, etc.
No. 22463. Dorothy Reed vs. Rheem Manufacturing Co., et al.

FRIDAY, MARCH 4, 1966

No. 22403. Stephen Miller, Barry Goldstein and David Cleverdon vs. State of Mississippi.
No. 22285. John J. Vaccaro vs. United States of America.
No. 22081. Jack T. Stewart (Jack T. Stuart) or Any Other Officer of the U. S. District Court vs. Vardaman S. Dunn.
No. 22973. Gregory Metoyer vs. William C. Holman, et al.

EDWARD W. WADSWORTH,
Clerk of the United States Court of Appeals
for the Fifth Circuit.

BY THE COURT:

NEW ORLEANS, LA., December 1, 1965.

NOTE—In view of the Court's practice of studying all briefs in advance of the hearing, the attention of counsel is especially called to the requirements of filing briefs in accordance with the Court's rules.

Counsel desiring to present oral argument will advise the Clerk's office by 9:00 A. M. on the date of hearing. Counsel desiring to submit their case without oral argument should notify the Clerk's office before the date of the scheduled hearing.

COURT CONVENES AT 9:30 A. M.

E. S. Upton Printing Co.
New Orleans, Louisiana—12/1/65—350

This form must be filled in by counsel, signed, detached, and promptly returned to:

Edward W. Wadsworth, Clerk
U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

...., 1965

Dear Sir:

I hereby acknowledge receipt of copy of your printed calendar showing my case in re:

No. ...., ... vs. ....,

assigned for hearing at 9:30 A. M. on ...., 1966, in the Louisiana Wildlife & Fisheries Bldg., Room 408, 400 Royal Street, New Orleans, Louisiana. The Clerk's Office will be advised by 9:00 A. M., on the date the case is assigned the name of counsel who will present oral argument. Counsel desiring to submit their case without oral argument should notify the Clerk's Office before the date of the scheduled hearing.

....

Attorney for ....

MSS
546

SEDFRE

MISSISSIPPI vs. CHINN, C.O. 1963-1964

Box 39
Folder 14

State Historical Society of Wisconsin

Please Retain Original Order

L. H. Rosenthal
Attorney at Law
242½ East Capitol St.
Jackson, Mississippi
July 3, 1963

Carl Rachlin
280 Broadway
New York 7, New York

Re: C. O. Chinn

Dear Mr. Rachlin:

You will be happy to learn that the day after you called I secured the release of Mr. Chinn from the Madison County Jail. In obtaining his release it took eight hours of my time. Any fee which you feel will be adequate will be satisfactory with me.

Yours truly,

L. H. Rosenthal
L. H. Rosenthal

LR/fr

RECEIVED
JUL 5 1963
LADECK & ELIAS

RECEIVED
AUG 19 1963
VLADECK & ELIAS

L. H. Rosenthal
242½ East Capitol St.
Jackson, Mississippi
August 14, 1963

Carl Rachlin
280 Broadway
New York 7, New York

Re: State of Mississippi
Vs. C. O. Chinn

Dear Sir:

In responce to your telephone call of August 13, 1963 I bill you for the above styled case.

This case took the entire day of 6/26/63, due to the delays caused by the sheriff, plus a trip to Canton, Miss. Therefore, I believe a fee of $50.00 would be fair to me as well as to you.

Yours truly,

L. H. Rosenthal

L. H. Rosenthal

to Hale

Dear
Richard
We owe a very modest fee of $50.00
to L.H Rosenthal of Jackson, Miss.
He is very reliable. I suggest you
if the party wants to and pay ~~him~~ this bill
Regards

L. H. ROSENTHAL
ATTORNEY AND COUNSELLOR AT LAW
221 NORTH PRESIDENT STREET
JACKSON, MISSISSIPPI
353-8143
939-1645

MAY 18 REC'D

May 14, 1964

Hon. Carl Rachlin
165 West 46th Street
New York, New York 10036

Re: State of Mississippi
Vs. C. O. Chinn

Dear Sir:

I hereby give to you, as requested, my estimate of the above styled case.

FACTS

1. The defendant carried upon his person a 38 claibre Smith & Wesson pistol.

2. The defendant carried the weapon in such a manner that it was partly concealed.

3. The defendant has had two prior convictions for carrying a concealed weapon.

LAW

1. Section 2079 of the Mississippi Code of 1942 as Amended states as follows: Any person who carries, concealed in whole or in part, any .... pistol, ... shall upon conviction be punished as follows: ....

2. The courts have held that a pistol is a deadly weapon: "A pistol is a "deadly weapon" within statute denouncing the exhibition or carrying of such weapon, even without proof that the pistol is loaded or presently capable of committing a violent injury." Cittadino v. State, 199 M 235, 24 So2d 93.

3. The courts have held that the weapon need not be concealed entirely but need only be concealed partly. "Person carrying deadly weapon only part of which is concealed, carries a "concealed weapon". Martin v. State, 93 M 764, 47 So 426.

4. The courts have held that the concealment might be done by use of the body. "Evidence showing pistol was on floor of automobile concealed by defendant's feet held sufficient to sustain conviction for carrying concealed pistol." Clark v. Jackson, 155 M 668, 124 So 807.

5. The courts have held that intent is immaterial in this type of crime. "Under ordinance in words of statute prohibiting carrying concealed pistol, one carrying pistol concealed in whole or in part is guilty regardless of intent." Clark v. Jackson, 155 M 668, 124 So 807.

As an attorney I can see only a techinical defense being available to this defendant due to the fact that he is guilty as a matter of law with the facts being undisputed.

I believe that a new trial could be obtained. I can not see the value of this due to the fact that he would be once again convicted due to the fact that the evidence would be the same and he would not have a new, or for that matter any, defense to raise.

This is not the first jail sentence this defendant has served, he has served a number of jail sentences for similar crimes as well as convictions for liquor violations.

Quite naturally his faimly is concerned and desires his release, however I believe as attorneys we must realize that we can not obtain the release of every person who is charged with a crime when they are guilty. In such cases I believe the best we can do for them is to obtain the least jail sentence and or fine possible. This was done in this case to the fullest. Under the indictment the defendant upon conviction would be imprison in the State Penitentiary for not less than one year nor more than five years. I manage to get the charge reduced to a misdemeanor, thereby the penality being only six months in the County Jail and $500.00 fine.

However, should your organization desire to finance a new trial for the defendant I will be more than happy to represent him. My fee in this case would have to be Ten

L. H. ROSENTHAL
ATTORNEY AND COUNSELLOR AT LAW
221 NORTH PRESIDENT STREET
JACKSON, MISSISSIPPI

353-8143 939-1645

Hon. Carl Rachlin
May 14, 1964
Page 3

Dollars per hour for work done in the actual furtherance of this case. I believe not less than 50 hours would be consumed in this work due to the fact that much time would be consumed in investigation of the previous juries and voting records of Madison County, Mississippi. Also, there would be the cost of expense in federal court, which as you know runs quite high.

With thanks for your courtesy and consideration in this matter, I remain,

Yours truly,
L. H. Rosenthal
L. H. Rosenthal

LR/fr

MSS
46 SEOFRE

Mississippi vs Morris, John B. Sept. 1961 – 1962
(Episcopal Society for Cultural and Racial Unity)

Box 39
Folder 15

State Historical Society of Wisconsin

Please Retain Original Order

DEFENDANT'S INSTRUCTIONS NO 1

The Court instructs the jury for the defendant that if have any reasonable doubt that the defendant has committed a breach of the peace, then you cannot ~~you~~ find defendant guilty.

DEFENDANT'S INSTRUCTIONS

NO. 2

The Court instructs the jury for the defendant that a breach of the peace does not occur within the meaning of this statute merely because persons other than the defendant threaten defendant if defendant has committed no act of violence or other breach of the peace.

DEFENDANT'S INSTRUCTIONS NO. 3

The Court instructs the jury for the defendant that if you find that the defendant is an interstate passenger, had a legal right to enter the waiting room of the _____________ _______________________, designated as "White" then you cannot find the defendant guilty.

DEFENDANT'S INSTRUCTIONS NO. 4

The Court instructs the jury for the defendant that if you find that the arresting police officer merely had a suspicion that other parties other than the defendant would commit an act of violence on breach of the peace by virtue of the presence of the defendant at the location where the arresting police officer arrested the defendant, then you must acquit the defendant.

DEFENDANT'S INSTRUCTIONS NO. 5

The Court instructs the jury for the defendant that the defendant is presumed to be innocent of the charge against him unless the state has proven beyond all reasonable doubt that the defendant has committed an act constituting a breach of the peace.

DEFENDANT'S INSTRUCTIONS NO. 6

The Court instructs the jury for the defendant that if you find the presence of the defendant at the place where he was arrested by the arresting police officer may have occasioned a breach of the peace by any party other than the defendant then you cannot find the defendant guilty.

DEFENDANT'S INSTRUCTIONS NO 7

The Court instructs the jury for the defendant that the defendant't failure to take the stand in his own behalf shall create no inference of guilt and you may not consider this in your deliberations.

DEFENDANT'S INSTRUCTIONS NO 8

The Court instructs the jury for the defendant that the defendant has no obligation to prove himself innocent of committing any breach of the peace.

DEFENDANT'S INSTRUCTIONS

NO. 9 Given

The Court instructs the jury for the defendant that if you find that the arresting police officer arrested defendant in order to preserve separation or segregation of the White and Negro races in the 1. Trailways Bus terminal then you cannot find the defendant guilty. (Ins. No. 13)

DEFENDANT'S INSTRUCTIONS NO 10

The Court instructs the jury for the defendant that if you find the defendant Not guilty the form of your verdict shall be "We, the jury find the defendant not guilty.

DEFENDANT'S INSTRUCTIONS NO. 11

The Court instructs the jury for the defendant that if you find that the arresting police officer believed that parties other than the defendant would commit an act of violence or breach of the peace by virtue of the presence of the defendant at the location where he was arrested by the arresting officer, then you cannot find the defendant guilty.

DEFENDANT'S INSTRUCTIONS NO. ~~10~~ 12

The Court instructs the jury for the defendant that no breach of the peace is occasioned by the defendant merely because persons other than the defendant threaten the person of the defendant because of his presence.

DEFENDANT'S INSTRUCTIONS

NO. 13

The Court instructs the jury for the defendant that if you find that the defendant committed no act other than the refusal to remove himself when ordered by the arresting police officer from the location where his arrest took place, then you cannot find the defendant guilty.

DEFENDANT'S INSTRUCTIONS NO. 14

The Court instructs the jury for the defendant that if the law enforcement officials were able to maintain order in the vicinity where defendant was arrested and defendant committed no act other than failure to remove himself from the location where he was then the jury cannot find the defendant guilty.

DEFENDANT'S INSTRUCTIONS

NO. 15

The Court insturcts the jury for the defendant that the term "prove beyond any reasonable doubt" means that the minds of the jury are unwavering settled and unable to come to any other reasonable conclusion and unless the minds of the jury are unwavering settled and unable to come to any reasonable conclusion other than that the defendant is guilty of a breach of the peace, the jury cannot find the defendant guilty.

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

September 5, 1961

TO PILGRIMAGE PARTICIPANTS:

Still another letter before we depart for New Orleans! You will be glad to know that today we added the Rev. Robert Fortna of New York City to our number and I am sure you will share my great regret at hearing from our intended Chaplain, the Rev. C. Kilmer Myers, that he will be unable to accompany us. His telegram said only that he could not come and would explain why in a subsequent letter. He had forewarned me in July that there was an outside chance a new child they are adopting would arrive at just this time. I know that he would encourage us onward and that his prayers will go with us although he cannot come.

Let me repeat - we are to be at the Dryades Street YMCA, 2222 Dryades Street, New Orleans 13, La., by 6:30 P.M. on Monday, September 11th. Because of the tension in New Orleans connected with the opening of school this week I would suggest that you go quickly and quietly to the YMCA and avoid any challenge to anything should something arise. I was called today by CORE and advised that the mayor of New Orleans has announced a very firm policy with regard to persons on either side of the issue. Even if there were no provocation on our part it would serve to our disadvantage to be called in question as likely disturbers of the peace when they are trying to open their schools on a desegregated basis. If you arrive in a group it would be well to disperse en route to the YMCA, but use your best judgement.

I should have submitted the enclosed to you sooner but my determination to prepare such a draft has grown out of my decision not to issue a final release on plans nor reveal names or itinerary in advance. Also, I felt we needed something comprehensive as possible in interpretation of our entire plan. Please examine it carefully.....if I receive no collect phone calls or telegrams in strong objection to all or a part of this statement I shall send it on Saturday to all bishops and to limited press media as a draft of what the group will consider for adoption on Monday night as our message to General Convention. If anyone calls me on it I shall not send it out as the suggested draft but we will weigh it Monday evening.

At this point I would suggest that we stay over Tuesday night in Jackson before attempting departure the next day to Birmingham. The p one number of Tougaloo Southern Christian College is EM 6-3425. I have been in contact with Dr. A. D. Beittel, the President, whose phone is EM 6-8242. You can give the numbers to your family as where you could possibly be contacted on Tuesday night.

My records indicate that we will have 27 men in the group with the possibility of one more I am listing as tentative. The right men can be accepted up until the last minute if space remains.

Faithfully,

John

John B. Morris

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

September 7, 1961

TO THE CLERGY AT JACKSON AND BIRMINGHAM:

The enclosed is the proposed message to the General Convention which the participants on the Prayer Pilgrimage will consider this coming Monday night in New Orleans. I am sending you this pursuant to my previous letter expressing the hope that our group might meet with the clergy in your city when we are there.

Yours faithfully,

(Rev.) John B. Morris
Executive Director

JBM:jlw

The Episcopal Society for Cultural and Racial Unity
5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA

RECEIVED
SEP 7 1961
VLADECK & ELIAS

For your information

Carl — Monday, Sept. 11, at 6:30 at The Dryades St. YMCA, New Orleans — ? O.K. — I'll be calling you. Final letters etc. to men enclosed.

John

THE REV. JOHN B. MORRIS
Executive Director

[1961, Sept.]

TO: THE PROTESTANT EPISCOPAL CHURCH'S 60TH GENERAL CONVENTION
FROM: THE CLERGY ON THE PILGRIMAGE FROM NEW ORLEANS TO DETROIT, SEPTEMBER 12-16

In the Name of Our Lord Jesus Christ, Amen. As priests of the Church, we have prepared this statement that it might accompany the message we bear to the General Convention by our pilgrimage and through the placard we shall unveil at the convention hall. We speak only for ourselves, but, in a deeper sense, we represent the concern of many more Churchmen: the laity and clergy who gave of their substance to make the journey possible and of their prayers to sustain us, and the still more innumerable body of faithful persons who serve that the Church might be more truly itself in its struggle for inner integrity.

Believing that the Church is one, even as the nation is one, indivisible in essence, we rejoice that our number includes clergy from one ocean to the other, and from the Great Lakes to the Gulf. As members one of another, in Christ Jesus, we recognize our responsibility for the health of His Church wherever the Gospel is planted; and as citizens of one country, we reject sectionalism that would limit the active expression of love for oppressed brothers. At neither our starting point or our destination, nor in the larger areas they symbolize, have we any reason for complacency over the tenor of Church life or its effect in the community at large. Obedient to the commandment of Christ to go into all the world, we are acting in this instance upon our involvement in the needs of His children everywhere. We remain aware of and will return to the critical problems and latent opportunities in our own primary fields of work.

Our chief message to the Church is set forth on the placard which convention delegates will pass as they go to and from their deliberations. It presents alternatives for the life of the Church in symbolic form. One part depicts the crucified Christ with His Body pierced through by barbed wire and two words: Segregation and Separation. On either side of the aweful fence a figure kneels. Strangers to each other, one is black and the other is white. An implicit question has been asked before: "Is it nothing to you, all ye that pass by?" The other part of the placard shows Our Lord in resurrected form, blessing two men who kneel before Him. As in the first scene, they are of different color, but here they recognize one another as brothers. With the Psalmist we may say: "Behold, how good and joyful a thing it is for brethren to dwell together in unity!"

This message is for Churchmen everywhere, and for all the imperative is the same: The Church must become, in every phase of its life, that which by nature it is - a holy fellowship where race is of no account. In a particular place, one aspect of the task may be dominant, while elsewhere more advanced levels of realizing the goal may be reached. None may rest until every trace of racial segregation and separation is expunged from the Body of Christ in all places. Responsibility for immediate and direct steps in the implementation of absolute principle bears a relationship to individual circumstances, but there should be no hindrance anywhere to full treatment of the principles and a foreshadowing of the steps to follow, with the first step begun. Each is accountable for decisions that fall short of the perfect Will of God. Usually we move far more slowly in the necessary steps than we ought, basing our choices on undue caution and faithless fear, rather than on either reasonable prudence or Christian courage.

At the beginning of our pilgrimage, we will look at segregation in the Body of Christ as found at some of the educational facilities we will visit. There are many other institutions where the policy is the same. We believe it to be a tragedy that they should have been closed ever, and a tragedy of immense proportions that Church schools and colleges have lagged behind others in the removal of racial restrictions. Before the courts ruled on legal questions at state-operated facilities, the Church had a theological and moral imperative to clean its house. Now the law has instructed us for seven years in what is just, right, and necessary, and still there are Church schools that are segregated. Our failure is magnified in those areas where public schools have opened, while Church schools remain closed. We share in this failure and are justifiably chided by the irreligious for the ineffectiveness of our lofty pronouncements. As members of the Body of Christ, concerned for the welfare of all of its parts, we should have made our visits earlier. We pray that our coming may help the Church to view this matter with renewed urgency, so that previously closed doors may be opened with a penitent and beckoning hand extended to those so long denied entrance.

At the end of our journey, we shall consider the more subtle and difficult question of separation. In a suburb of Detroit we will confer with local clergy on the role of the churches in overcoming discriminatory housing practices. This is the most crucial need in areas which have discarded the more blatant forms of segregation. After the old barriers are gone, men may meet as strangers and equals before the law. They live in separated housing areas, and they go to separate churches. Our "separate-but-equal" parish system is not only a product of the housing pattern but a contributor to it. Too often parish life is an adjunct to some cultural, economic, or racial separation of God's children, when it should be a unifying force within the community. We have had "Negro churches" and "White churches", perpetuating the system by our attitudes and our approach to clerical appointments. Let those who were first set apart by the old barriers, and then separated by customs and covenants, become brothers now before parish altars. Let their diversity testify to their unity in Christ Jesus. This is the opportunity before Churchmen in many parts of the land, and ultimately everywhere. We pray that the General Convention will help the Church commit itself to what it must do regarding parish life and in the community to support open occupancy patterns in housing.

Whether with the dying forms of segregation or the elusive, but equally fragmenting, devices for the separation for Christ's Body and the community, Churchmen everywhere have work to do. We are making our journey that the Church might focus for awhile on the needs, and gain a renewed vision of the goals and fresh understanding of its task. In places where our coming may evoke hesitancy or regret among local clergy, we will seek opportunities to confer with them. We trust that such occasions will lead to greater understanding on the part of all. We sincerely hope to conclude our pilgrimage without interruption, but we cannot enjoy the luxury of being exempted from consequences born out of our conviction that the Church is one and that we, as priests of the Church, cannot be divided according to the ways of the world. If anyone feels we do harm to the cause of Christ, we pray that this may not be so; and we earnestly suggest review of the nature of our mission as His disciples. It is in His Name that we go forth, and to Him we offer our selves, our souls and bodies for what we pray may be used for the spread of His Kingdom. In such days of world crisis, with dark signs of world destruction, may His Church, at least, be found faithful. Amen.

[1961, Sept.]

MESSAGE TO THE EPISCOPAL CHURCH'S 60TH GENERAL CONVENTION, DETROIT, MICHIGAN, SEPTEMBER 17-29, FROM THE CLERGY ON THE PRAYER PILGRIMAGE BETWEEN NEW ORLEANS AND DETROIT, SEPTEMBER 12-17:

As priests of the Church, we have prepared this statement to interpret the message we bear to the General Convention by our journey from New Orleans. While we speak only for ourselves, we represent the concern of many more Churchmen: those who have given of their substance to make the journey possible and of their prayers to sustain us, and all others concerned that the Church be more truly itself.

Our message to the Church is that the Church must become, in every phase of its life, that which by the grace of God it is - one Holy Fellowship where racial barriers have been done away.

We recognize and share in the Church's appalling failure to express this in its life. We are justifiably chided by the irreligious for the emptiness of our pronouncements. We are also aware that individual circumstances determine the immediate and direct steps to be taken by Christians in a particular place, but nothing can be allowed to blurr for us what the perfect Will of God is. We seek by our journey to express our common repentence and witness to His Will.

Since the Church is one, even as the nation is one, we rejoice that our number includes clergy from one ocean to the other and from the Great Lakes to the Gulf. As members one of another in Jesus Christ, we recognize our responsibility for the health of His Church wherever the Gospel is planted; and as citizens of one country we reject sectionalism that would limit the active expression of love for oppressed brothers anywhere. At neither our starting point in the South or our destination in the North, nor in the larger areas they represent, have we any reason for complacency over the quality of Church life in which we all are involved, or its effect in the general community.

At the beginning of our journey we shall see segregation in the Body of Christ as found in some of the educational facilities we are to visit. We believe it to be a tragedy that Church schools and colleges ever should have been closed to some, and a tragedy of immense proportions that they have lagged behind the state in the removal of racial restrictions.

At the end of the pilgrimage we shall consider the more subtle and difficult question of separation, both within the Church and the community. At a suburb of Detroit we will confer with local clergy on the role of the churches in overcoming discriminatory housing practices. Men are forced to live in separate areas and they go to separate churches. Our "separate-but-equal" parish system, as it exists in the North as well as the South, is partly a result of the housing pattern, but also a contributor to it. Clerical appointments reflect the fact that we have made parish life an adjunct to racial separation in the community.

Whether with the dying forms of segregation or the elusive, but equally fragmenting devices for the separation of Christ's Body and the community, Churchmen everywhere have work to do. We are making our journey so that the Church might focus on the needs, and gain renewed understanding of its task. In places where our coming may be regretted by some, we will seek opportunities to confer with the clergy so that greater understanding may be had by all. We sincerely hope to conclude our pilgrimage without interruption, but we cannot enjoy the luxury of being exempted from consequences born out of our conviction that the Church is one and that we, as Christians, cannot be divided according to the ways of the world. It is in His Name that we go forth, and to Him we offer our selves, our souls and bodies. In these days of world crisis, with darkening signs on all sides, may His Church, at least, be found faithful. Amen.

[1961, Sept.]

STATEMENT BY REV. V. POWELL WOODWARD

FOR FIFTEEN EPISCOPAL MINISTERS

We now continue on our way to the General Convention of the Episcopal Church in Detroit. Two of our members will remain in jail for a time.

We intend to appeal to the United States Supreme Court, if necessary, to obtain justice. We believe that our counsel showed conclusively that there is no evidence to support our conviction by the City of Jackson on a breach-of-peace charge. We hope that Governor Barnett will take this time, proclaimed to be "Constitution Week" by President Kennedy, to consider how his authorities have repeatedly ignored the Constitutional rights of peaceable racially-mixed groups such as ours.

We do not believe that Judge James Spencer is competent to find us guilty of violating Episcopal Church law. His venture into canon law obscured the criminal issue and endangered our American heritage of separating Church and State. We hope that he has now noted Thursday's statement by our Presiding Bishop, the Rt. Rev. Arthur Lichtenberger. The bishop praised our action is "an attempt to bear witness...to the whole country what the position of the Episcopal Church is."

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PRAYER FOR COURTS OF JUSTICE

"Almighty God, who sittest in the throne judging right; we humbly beseech Thee to bless the courts of justice and the magistrates in all this land; and give unto them the spirit of wisdom and understanding, that they may discern the truth, and impartially administer the law in the fear of Thee alone; through him who shall come to be our Judge, Thy Son, our Saviour Jesus Christ." Amen.

Book of Common Prayer, pp. 35-36.

9:18:61

[1961, Sept.]

The following statement for the entire group of priests on the "Prayer Pilgrimage of ESCRU (Episcopal Society for Cultural and Racial Unity) was read by the Rev. Merrill Orne Young of Boston at the society's dinner Wednesday evening, September 20. Members now return to their various homes and duties, and will continue their prayers together, wherever they are, at the same hours three times daily.

The statement is:

"Almighty God in His mercy having brought us safely to the end of our journey, we who have made this pilgrimage together desire to return public thanks for the multitude of graces which He has bestowed upon us.

"Among the chief of these has been the support of countless faithful people through prayer, public testimony, and material assistance offered in many cases in the face of deeply hostile community sentiment. To our admiration for the Christian courage of those who supported us in such situations we add our humble recognition that they have participated in our pilgrimage even more truly than we who have actually made it.

"We thank God also for the extraordinary consciousness of His presence and protection which we have enjoyed throughout our days together. We lay our now completed pilgrimage at His feet to make use of as He will.

"We wish to record our admiration for the clergy of the South whom we have met along our way and for many, many more we did not meet, who are ministering faithfully under an almost unbearable tension

-more-between what the Gospel says and what their people will hear. We call upon the Church in other parts of the land to be generous with its prayers for priests laboring in such circumstances, to be forebearing in judgment, and to be diligent in seeking means of practical assistance.

"At the same time we affirm that the Gospel must be preached even when the Word of God is sharp and cutting. We remind the laity of the South of their duty to love and support those who are their pastors in Christ and of the fact that no loyalty to the secular community in which they live or to its traditional way of life can rightfully oppose the just claims of their brothers in Christ to be treated as such, to receive full personal, social, and political acceptance within the Church and in the larger community.

"For part of our group the journey we had planned was interrupted by action of civil authorities, an action which we protest on grounds both legal and moral and which we are appealing. As a result we were prevented from devoting as much attention to the Church's situation in the North as we had hoped. A part of our group, however, was able to keep our appointment with the Ministers' Association of Dearborn, Michigan. The problems apparent there are problems familiar to most of our group in the areas from which they come, and we believe ourselves both competent to speak to them and compelled to do so.

"In the degree to which community feeling in the North is less obdurately set against racial integration than in the South, to that degree the Church is more culpable in its failure to purify its own life of all traces of racial separation and to exert vigorous leadership against this deformity in the life of society at large. We may expect little mercy from our Heavenly Judge if out of willful blind-

-more-

ness, indifference, or fear of inconvenient consequences Churchmen in the North tolerate in comfort the evil which is crucifying brave Churchmen in the South.

"We call upon laymen in the North to remember that in every action of theirs the Church is acting. In their actions as land owners, tenants, mortgage brokers, realtors, and bankers the Church can and must act against the pattern of segregated housing. In their actions as corporate managers, union leaders, personnel directors, shareholders, and legislators laymen can and must act as the Church to secure equality of employment for all, regardless of race. As school administrators, P.T.A. members, civic officials, and voters laymen can and must act for the Church against the Northern pattern of inequality and de facto segregation in schooling.

"We call upon the clergy in the North to educate and encourage the laity in this task and not to neglect their own urgent responsibility to be sure that their own parish churches seek out and welcome people of all races and admit them warmly to all activities of the parish family.

"We respectfully urge our bishops, our chief pastors and the unique symbols of the Church's wholeness, to lay seriously to heart the dangers in which we stand by reason of our unhappy divisions and to be brave and imaginative leaders in resolving them. In particular we call to their attention the lamentable pattern of clergy placement along racial lines and the existence of institutions which claim the name of the Church yet which refuse to serve its members without respect to race.

"Time is short. Let Christ's Body be rent no more. God save us all. Amen."

[1961, Sept.]

STATEMENT BY THE REV. ROBERT L. PIERSON
TO THE PEOPLE OF JACKSON AND MISSISSIPPI
FOR FIFTEEN EPISCOPAL MINISTERS

Knowing that many people of this city and state find the purpose of the actions which brought us in conflict with local authorities difficult to understand, we wish to reiterate that we have been engaged in a pilgrimage of prayer to testify to the nature of the Christian Church as a fellowship, grounded in one Lord, within which there is no place for separation by race, class, or culture.

As priests of the Church engaged in such a pilgrimage, we cannot submit to immoral laws which demand that we separate racially. Nor can we conscientiously avoid entirely the situations in which these segregationist laws operate contrary to the law of the land.

If we had not been prevented by the police we would have continued our pilgrimage northward as we originally planned. In Dearborn, Michigan, eight of our colleagues have protested the same evils of unnatural and ungodly separation of people by race which we protest here, in a form no less vicious for being more subtle. In the secular life of the North there is discrimination in housing, schooling, and employment. The Church is not only weak in its leadership against these evils but exhibits in its own life a disloyalty to its true nature that expresses itself in the existence of separate white and Negro parishes, in Church schools and institutions which are segregated in practice, and in the assignment of clergy in parishes according to racial lines.

The State of Mississippi has chosen to prevent our completion of the pilgrimage and thereby has focused upon its own failures the attention which otherwise might have been diverted to failures elsewhere. As ministers of the gospel of Christ we appeal to the consciences of Christians everywhere to be faithful to the unity which Christ has given us and to banish all traces of racial segregation and discrimination from the Church and from all parts of the land.

9:18:61

copy

RECEIVED

October 31, 1961 NOV

VLADECK & ELIAS

Mr. James Farmer
CORE
38 Park Row
New York 38, New York

Dear Jim:

This is to thank you and others there for standing by while fifteen of us on the Prayer Pilgrimage were in jail in Jackson last month. I believe that you were telephoned by a number of our people, and for a time, we did not know whether we would have to turn to a number of agencies for help with bail. As it turned out, we were all very grateful that the Church came through with sufficient funds for our release on bail.

Needless to say, we were very grateful to Carl Rachlin for being on hand the day of our trial in the city court. He did a magnificent job which I wish could have been filmed for posterity!

From my previous communications with you or Marvin Rich, it has been my understanding that CORE would take care of our legal expenses up theough our recent incarceration and the initial trials. We never discussed matters further than this. Please correct me if I am in error regarding this understanding. At the same time, I would like to say that, if we are able eventually, we would like to see that everyone is properly reimbursed for whatever expenses they may have had in connection with our cases. At the present, however, we are setting our sights toward raising quite a bit more money looking toward the trials in May with the increased appeal bonds, as well as all of the travel expenses, et cetera.

We thought we were going to have to look to some of the Civil Rights agencies for help with the initial bail, and then the Church came through. What could we possibly expect from CORE or other agencies in the future? Again, we would feel a responsibility to expend every effort to rais all funds necessary so as not to be a burden on anyone else. It would be good to have some idea of what resources we could fall back upon if we failed in raising sufficient funds. Specifically, will CORE be able to provide us with any continuing legal services, letting our initial available funds be applied toward bail and travel? If so, we would certainly not report this to the persons from whom we are seeking contributions as, indeed, we are setting our sights on raising the whole amount of what will be needed. In other words, we would not tell anyone that we could expect the legal fees to be covered by any other agency.

I have made an appointment with Carl Rachlin for 9:30 a. m. on December 7th to review our legal situation and map out plans for the trials next May. It will be at his office, and he may invite one or two others from various other agencies such as the NAACP. It is my hope that we can use our trials as advantageously as possible, and draw in as many people from various agencies as are willing to help out. It would seem to be a good thing if Mr. Greenberg from the NAACP took one or two of our cases, with Carl taking several, and such other distinguished lawyers as we could find to work on the case also being involved: I mentioned to Carl that we might even get Bishop Pike to sit in on a consultative basis. I think there is a lot of mileage to be utilized here in terms of showing up the whole system in Mississippi for what it is. Apparently the press was, and may still be sufficiently interested in our cases to warrant full utilization of them for public consumption. Also, in the same connection, I would welcome as much mutual cross-identification as possible between the various secular Civil Rights groups and ourselves so that the country might know that we are all essentially united in our concern in this field. There is something here which might be beneficial to all, as well as to us.

I shall hope to have an opportunity to see you when I am there in December, if you are not in on the conference on the 7th. In the meantime, please know how grateful we are to you and the others at CORE for the help you have given us and the advice and encouragement along the way as we mapped out and executed our recent journey.

Yours faithfully,

(Rev.) John B. Morris
Executive Director

JBM:jlw

P. S. I am enclosing several copies of a leaflet containing statements from our Pilgrimage which you might like to share with others in your office.

CC: Mr. Carl Rachlin
280 Broadway
New York 7, New York

COPY

October 31, 1961

Mr. William Stringfellow
Ellis, Stringfellow and Patton
41 East 42nd Street
New York 17, New York

Dear Bill:

I am seeing Carl Rachlin, the chief counsel for CORE, who served as our attorney in Jackson, at 9:30 a. m. on December 7th. We are going to review our legal situation and map out plans for our trials at the county level in Jackson next May.

I wonder if you might talk with Carl in advance of December 7th, and consider being present for our conference that morning? It will be our concern then, partly, to discuss the various ways in which our trials might be used advantagiously for showing up the whole system of segregation in Mississippi. We will be just as happy if the cases are quashed by several maneuvers for injunctions, but if they come off, we are willing to play them for all they are worth in terms of the public attention they may receive.

We appreciated your telegram received while in jail, and rushed immediately to the Bible to find what the reference you gave was. At this point, I forget what it was, but at the time, we all said that it was just like Bill Stringfellow, and we were very, very grateful to you.

Yours faithfully,

(Rev.) John B. Morris
Executive Director

JBM:jlw

CC: Mr. Carl Rachlin
280 Broadway
New York 7, New York

ERNST H. ROSENBERGER
ATTORNEY AT LAW
80 WILLIAM STREET
NEW YORK 38, NEW YORK

WHitehall 4-0040

December 6, 1961

The Rev. John B. Morris
Executive Director,
Episcopal Society for Cultural & Racial Unity
5 Forsythe Street, N. W.
Atlanta 3, Georgia

Dear Reverend Morris;

I regret that, because of an engagement at trial, I will be unable to attend the meeting scheculed for the morning of December 7th at Mr. Rachlin's office. I have asked Mrs. Anderson, who will be present, to represent me there.

I would like to confirm at this time that which I told Mrs. Anderson earlier. I am willing to appear and defend in the Courts of Mississippi those of your members who would require such services. I will appear without fee; I ask only that you arrange for my actual expenses to be paid. I have been informed by Mr. Travis, the prosecuting attorney in Jackson, and by the presiding Judge that I would be permitted to continue to appear as defense attorney in "Freedom Rider " cases before Mississippi Courts.

I look forward to the opportunity of meeting you personally and discussing these matters further.

Very truly yours,

Ernst H Rosenberger

ERNST H. ROSENBERGER

EHR:sg

cc: Carl Rachlin, Esq.
A. Thacher Anderson, Esq.

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY

Epiphany Season NEWSLETTER January 6, 1962

...ALL MEN UNTO HIM...

Along with Whitsuntide this is a season that proclaims the Church's inclusiveness. Men of every color, culture, and nation were caught up by the Wise Men in their visit to the Christ Child. He was not for any one nation, but for all! God was in Christ reconciling the entire world to Himself, not just a special people, caste or class. Look at the figures of the Magi in a creche scene: At least one is of dark color. Do we surround Him at our altars with a similiar scene? The season of the Manifestation of Christ to everyman - a season for evangelism - is inextricably tied to the degree of integrity found within the Household of Faith. As this is absent, so is our view of the Babe of Bethlehem dimmed.

SECOND ANNUAL MEMBERSHIP MEETING

June 21-24, 1962, Chicago, Ill.

Mark and guard these dates on your calender! The site will probably be the University of Chicago's campus. This year's meeting will be one where families and children can come. Lake Michigan and Chicago offer many opportunities for vacation planning before, after, or during the Meeting......Details soon!

Sessions will include varied aspects of the intergroup situation in Church and America. Focus on work of local parish, chapter, diocesan department, etc, etc.

ANOTHER ESCRU OPPORTUNITY!

DON'T MISS IT!

RACE RELATIONS SUNDAY AND THE PRAYER PILGRIMAGE APPEAL FUND

Episcopalians can join in the observance of Race Relations Sunday on February 11, 1962, in a special way this year. Fifteen clergy of the Episcopal Church come to trial in Mississippi between May 7th and May 15th. The charges brought are because they would not be separated by race at meal time. Funds for increased amounts of bail, travel expenses, and legal costs to take the cases to the Supreme Court must be raised by May or the clergy will return to the Jackson City Jail. Episcopal Churches throughout the country could raise the necessary funds on February 11th if enough tried, willing also to face the deeper implications of the arrests and the Prayer Pilgrimage. A leaflet of statements from the Pilgrimage is available to help with interpretation. A mailing envelope can be obtained in quantity if contributions are to be sent direct. However, special notices in parish bulletins, forms therein for contributing, etc., could be devised locally. There is not time to circularize other than Society members. Would you (possibly with others) take responsibility for encouraging this approach to Race Relations Sunday in your area? Talk with you rector, other clergy, the bishop and see what can happen. It will help meet an urgent need. It may help otherwise too.

SEWANEE - AN EDITORIAL REPORT FROM THE EXECUTIVE DIRECTOR OF THE SOCIETY

With other matters headlined "Episcoponderings", the September 19th CONVENTION DAILY carried this item: "Plane companions, Sewanee to Detroit: the Rev. John B. Morris and the University of the South's vice-chancellor, Dr. Edward McCrady. Must have been a stimulating ex post facto chat." It probably would have been, but I was still a guest in the Jackson City Jail. There is much that might have been discussed, although the chat would have commenced with a review of the just-concluded visit to Sewanee of seven Prayer Pilgrimage clergy. With them, I would have had the expectation that the Inn would be desegregated once the Regents met in October. However, I believe the "V-C" would have changed our conversation from specifics and spent the flight telling me how Joseph Le Conte's propositions apply to racial problems as much as they did to the controversy about evolution and religion! (See Sewanee Bulletin, Vol. 56, No. 2, Page 49). Becoming tangled for the time in such sophistry, I would have arrived in Detroit still thinking the Inn would open. It would have been a month later that I would have understood our conversation, after the Inn's refusal of lunch to four more priests.

Among other things, had I been on that plane, I would have expressed confidence in Sewanee's potentiality for service to the whole Church, as demonstrated in the summer Graduate School of Theology. The University's high academic standing certainly deserves praise. The natural beauty of its setting is undoubted. There are fine men on the seminary, college, and summer school faculties. We can, indeed, agree with Sewanee's Chancellor, the Rt. Rev. Charles C. J. Carpenter, who said last June: "We recognize the tremendous potentials of our University...." Nothing that follows is a denial of the present ways in which Sewanee does serve. The problem that is Sewanee is inherent, however, in the ambiguity of something else Bishop Carpenter said: "Our nation needs Sewanee and all that Sewanee stands for, and needs Sewanee at her best - and that as soon as possible." I can't be sure that the Bishop and I attach the same value to some of these words, nor does it appear that the best of Sewanee has been sufficiently revealed to permit of making the referral. Yes, we need what Sewanee can be, but serious questions must surround the claim that we need "all that Sewanee stands for." Much of what Sewanee stood for and continues to stand for is repugnant to Christian teaching, and has retarded any full flowering of Christian tradition there. The past can not indict presently committed students and faculty, and had there been signs in the last ten years of a change in heart by the administration, it might be left buried. However, the absence of amy marks of corporate regret for previous wrongs leaves serious doubt that the essential outlook of the University has changed since its founding. It seems only to have adapted to present circumstances, as public pressure and history has made this inevitable.

A look back will show that Sewanee's official name, The University of the South, is its millstone. Clement Eaton in *Freedom of Thought in the Old South* has this: "The movement to convert the schools and colleges of the South into propaganda institutions reached its culmination in the founding of the University of the South at Sewanee, Tennessee. Bishop Leonidas Polk of the Episcopal Church proposed as early as 1856, the establishment of a university at which sound doctrines on slavery should be taught. Thus, a native ministry for the Episcopal Church would be educated, and Southern youths would be protected from the radicalism rife in the North. A writer in De Bow's Review gave his blessing to this enterprise as an instrument for unifying the South, and welding the Southern States into a nation. Here at Sewanee, the sons of Southern planters could drink 'pure and invigorating draughts from unpolluted fountains' and no longer be corrupted by Northern colleges." The historian, William B. Hesseltine, gives us the same picture on the founding of Sewanee in his work, *The South in American History*, and concludes with mention of Polk's 'laboring in another field to preserve the southern tradition" through Confederate Army service begun eight months after laying the cornerstone for Sewanee. It should be self-evident why the University of the South's very name is its millstone. Because of its history, perhaps a genuine change in heart would be accompanied by the catharsis of throwing of a name in which there is resident such embarrassment for the Episcopal Church.

Conceived in racial prejudice and sectional bitterness, Sewanee still wrestles with the specter of Bishop Polk, whose spirit looms as large as the new tower WITH BELLS dedicated to him. The umbilical cord between the culture of Coastal Carolina and Sewanee has been kept amazingly vibrant, as demonstrated in the recent honorary degree given an editor from Charleston, who is one of the South's most articulate racists. The editor's columns previously had expressed gratitude to Sewanee's Vice-Chancellor for the assurances he had given that education need not include integration of the races. The most presently acceptable espousal of this viewpoint is seen in Dr. McCrady's comments to Sewanee's Trustees last June when he said: "The attempt to enforce integration by legislative and coercive measures seems to me to have set back the cause of good will and brotherhood by many decades." Our changing history may be observed in the varying ways Sewanee spokesmen state their views on race from one era to another, and from year to year. It is a change in words, but not a change in heart.

I suggest that the Administration has played a dominant part in the archaic posture of Sewanee on matters of race, all the while building up an excellent educational facility. I believe that other leadership could have more adequately sought the enlightening benefits that come with a liberal arts education. At the same time, it must be recognized that the Church's owning dioceses bear a heavy responsibility for the failure until recently to provide positive direction in this area. Indeed, the Church at large is guilty of letting Sewanee go its insulated way, removed from the scrutiny of the Church and the press. Dr. McCrady has said: "Sewanee is not just Church-related, or Church-connected - it is as much a part of the Church as National Council or General Convention." As such, the Church throughout the country must have a concern for university policies, even as she is served by Sewanee. While control will remain with the owning dioceses, influence and great expectations should mark the relationship of Episcopalians everywhere with this institution which, by its own claim, is the "largest investment in education by the Episcopal Church in America." An obligation of financial support is a further commitment which the balance of the Church must heed, expecting much of the investment in terms of Christian standards. Carried elsewhere in this newsletter is the resolution of the Regents of Sewanee on October 12th dealing with what may be the final place of outward racial barriers at Sewanee - restaurant and motel facilities built by the University in recent years, serving any white tourists passing through, but denying service to Negroes. To date, fifteen priests of the Church, in three different interracial groups, have been denied food service. Had this resolution been in effect, the clergy in one of these groups would have been fed. The others, not being "Students, faculty, or official guests of the University" would have remained outside. Someone might suggest they go down the street to Dr. McCrady's and receive some kind of pass, making them official, but it would have been uncomfortable inside as a Negro family was turned away while travelling from Chicago to Miami for the husband to attend a professional convention. This family might have been housed in a fine hotel in Gatlinburg, Tennessee, the night before, or they may have dined without difficulty in Nashville or Chattanooga, but there would be no room at the Sewanee Inn on the basis of the terms of this resolution. The fact that the husband was Senior Warden of his parish, and that they had hoped to see something of the Church's "largest investment in education.....in America" would not have been known at Sewanee, and it is doubtful that they would have accepted a pass even if it were offered.

The substance of the resolution is not yet in effect, and it is well, for it is both amoral and immoral. Selective acceptance of "our" Negroes is too much like pridefully pointing out that even the maid sits down at the breakfast room table on special occasions. In Tennessee, at this point in history, it is an abomination for the Church to be partner to a commercial facility which discriminates on the basis of race. Dr. McCrady says: "The faculty have expressed themselves as very pleased with the results, and I must confess that the Regents went further than I could have anticipated." Is the faculty pleased? Could not McCrady have exerted influence for making the change across the board in October, rather than proposing the slowest expression of gradualism yet seen? Will not someone accept responsibility,,and recognize moral factors involved?

Many people urged in October that visits by Churchmen to Sewanee be immediately arranged to protest the failure of the Regents to act decisively. Because faculty at Sewanee have said that they would join a further effort if the February meeting of the Regents does not act to eliminate all discrimination, it has seemed best to wait in hopes that the interest of others will not be needed. The potential that is Sewanee will be realized to the extent that committed persons on campus give of themselves to make it a great University. Some persons on the scene, though, seem naively grateful for small handouts which might have constituted progress ten years ago. The time is far spent for Sewanee to more honestly uncover the best in its tradition, which the nation does indeed need, but this is Christ and not itself. Had I been on that plane with Dr. McCrady, I would have said that we do need a great University of the Church in the South. We do not need a University of the South.

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PRESIDING BISHOP'S STATEMENT to ESCRU. The Rt. Rev. Arthur Lichtenberger, Presiding Bishop of the Episcopal Church, sent the following message to the Society's Dinner at General Convention. It was dated September 12th, the day before the arrest of 15 priests on the Prayer Pilgrimage. Bishop Lichtenberger a few days later made another statement to the press about the arrests.

> "I regret very much that another engagement makes it impossible for me to be with you this evening. There are just too many dinners and meetings I would like to attend scheduled at the same time.
>
> "We need such an organization as the Episcopal Society for Cultural and Racial Unity, at work in our nation today. I rejoiced when the Society was first formed. I believe now that its continued existence is a sign of health and vigour in the Church. There are differences of opinion I know, even among the members of the Society, as to the precise forms of action that are strategic and wise. But this in itself is a sign of life and we do need the witness of such a group now, for you are concerned with one of the most critical issues of our day. The time is short.
>
> "May you have the wisdom and courage and charity to help us find the way to live the truth we proclaim, that we are all one in Christ Jesus."

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THE PILGRIMAGE. Members were sent the leaflet of statements that came out of the Pilgrimage. A full analysis of the apparent effect of the venture in these columns will have to wait. Trials at the county court level begin on May 7th for the fifteen clergy arrested. The Sewanee part of the Pilgrimage is not yet settled. It will be a matter in the news for some time to come in all likelihood. Reactions of churchmen have varied from embarrassed silence to tearful appreciation. The question is continually asked the Executive Director if other such journeys are planned. They aren't as of press time, with no anticipation of another. The demands of the passing days cannot be foreseen for this kind of thing. Tomorrow might bring a need. The Prayer Pilgrimage saw a combination of needs fall in our lap at the right time in history......We will talk more about this later.

ESCRU CHAPTERS AND LOCAL GROUPS

In General: By the appointment of the Executive Committee last May the Rev. Gerald Humphrey of Beacon, N. Y., is in charge of developing a more adequate liason between chapters and the national office and between chapters and local groups themselves. Ways and means for this are being explored. This is becoming an increasingly important part of the Society's work, as members in more and more situations come together to pool their concern and talents for the strengthening of the Church in their metropolitan area or diocese. In most places the emergence of an ESCRU group, and then chapter, has been welcomed by the diocesan authorities, with the bishop recognizing that his arms can be supported by such a group. In a few instances Society groups are anathema to the official authorities of the Church. They don't want "the boat rocked" or initiative to come from below. The fact of ESCRU in the life of the Church, however, is something that must be faced, for each week's mail brings news of some other area beginning to mobilize.

Society leaders at the local level must be wise as serpents, and gentle as doves. Where a quiet contact will effect a change, it may be the better way, albeit the chapter receives no credit. In taking a posture of responsible militancy, the meaning of both words must be heeded, and there will be dangers to err on both an overly cautious side as well as on a reckless or ineffectual side. It must be recalled that membership in the Society is by way of affiliation with the national body. There will be many members who are either unable or unwilling to be involved in local groups. Their freedom in this must be respected. We can only seek to elicit commitment; we cannot give blueprints for action as if they were obligatory.

Chapters face all the usual problems of any organization. There is the initial excitement, with the feeling that all is now solved simply because a chapter exists in name. Then comes the realization that it takes time and bodies to carry through on program. Chapters must guard against becoming over-extended in what they set up in the way of organization and meetings. Depend on the Holy Spirit to work in between times, recognizing that the Church itself is our context for operations. At times all a chapter may need to do is serve as the initial prodder, catalyst, or resource. Others will carry through.

As soon as possible the national office hopes to be able to provide more counsel and suggestions on the work of local groups. The Annual Meeting in Chicago will deal with this. Following is a brief sketch of each group, or what has happened with each recently:

New York Chapter. Headed now by Malcolm Peabody, Executive Director of the State Commission Against Discrimination, New York has been involved in fund raising for the Prayer Pilgrimage Appeal Fund extensively. Plans for a benefit entertainment night are being considered. Interest in greater representation of minority group Churchmen at Church schools has been a recent program concern.

Greater Boston Chapter. In November Boston ESCRU bid farewell to their first Chairman, the Rev. John W. B. Thompson, who went to Mobile, Alabama, to become Rector of the Church of the Good Shepherd. The Rev. James Breeded is now the Chairman. The Cambridge Unit of the Chapter sponsored a well attended and staffed program on Housing Segregation in November, and the Chapter had a meeting at the Cathedral in December to discuss local action in other areas.

Long Island Chapter. Chaired by the Rev. W. Robert Hampshire, they have focused chiefly on discriminatory practices at St. John's Hospital, Brooklyn. On December 7th a dinner was held honoring the Rev. Robert Chapman who has just gone from Hempstead to become the Executive Secretary of the New York City NAACP. As a service to the diocese, the Chapter has made available printed cards carrying the text of a diocesan resolution on integration.

Richmond Chapter. Special speakers have met with the Richmond group at fellowship gatherings throughout the year, with Bishop Gibson as speaker at the last meeting, together with a report from a priest they helped to send to General Convention. The Chapter is headed by the Rev. Walter Hendricks, Jr.

Pennsylvania-Delaware Chapter. A report on the Prayer Pilgrimage was given at a recent meeting of the chapter headed by Mr. Robert L. Kirk. Inquiry into discrminatory policies of several Church schools has been a major concern of this group from its beginning. For at least one institution it now seems that applicants are needed.

St. Louis Chapter. Dr. Edward Reinhard heads the St. Louis Chapter which sponsored a well-attended dinner meeting which the Society's Executive Director addressed in November. Pilgrim James Evans also spoke. Hospital policies presently constitute the chief area of focus in St. Louis.

Chicago Chapter. A program of planned visitations of interracial teams to both white and Negro parishes has been apparently quite successful. (See the Bishop of Chicago's comments elsewhere in this newsletter.) The Chairman of the Chapter is Mr. Ellis A. Ballard. In the fall the Chapter engaged in extensive fund raising efforts which more than covered the initial bail on the three priests from the Chicago area.

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OTHER GROUPS HAVE FORMED WHICH HAVE NOT YET BEEN CHARTERED:

Detroit. The newly formed Michigan group is planning a first general meeting in about a month. Bishop Emrich met with the Board recently to discuss the role of a Chapter. The Chairman is Mrs. George Edwards, presently of East Lansing, who is moving to Detroit where her husband will be police commissioner.

Minneapolis/St. Paul. In September the newly forming group heard the Rev. James Breeden on the Pilgrimage, and in November the Society's Executive Director spoke at a luncheon meeting. The Chairman is Dr. Van S. Lawrence.

Los Angeles. It was decided at a Workshop on the Church and Race, led by the Society's Executive Director on November 14th, that a chapter should be started. A further meeting on December 6th mapped out plans for a gathering of interested persons at the time of the diocesan convention in February. Another meeting on January 9th at the home of the Rev. Michael Hamilton was to deal with the further plans and leadership of this group.

Maryland. Presently led by the Rev. Jacob B. Berlin, this group is to plan its permanent organization in January. On December 10th it sponsored a Service of Witness at Grace and St. Peter's Parish, with massed choirs, the Bishop Coadjutor, and about thirty clergy in the procession. The preacher was ESCRU Board member, C. Kilmer Myers.

At the Seminaries. More informal groups of Society members and friends meet from time to time at the Church Divinity School of the Pacific and at the General Theological Seminary. In the latter group, with Mr. Frederick B. Williams as Chairman, an effort is being made in the seminary community to raise money for the Prayer Pilgrimage Appeal.Fund.

Elsewhere..... Tentative steps have been taken toward possibly forming groups in Denver, Seattle, San Diego, Cleveland, and Bethlehem. And still elsewhere, individual Society members are weighing this and talking with others. (Please rush advice to Atlanta if any places were inadvertently left out of various lists!)

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EXECUTIVE DIRECTOR'S TRAVEL. In the fall of 1961 the Society's Executive Director visited twenty-six different dioceses, with one or more speaking engagements, preaching occasions, or conferences in each. His travel schedule is now, for the most part, planned as far as a year ahead in some cases. It will make for an economy in time and travel expense if chapters, parishes, or diocesan officials will offer alternative dates when inviting him to visit. Also, if you want a visit and simply let this be known, it is possible that a stop-over in connection with another trip can be arranged sometime. A small group of key leadership clergy and laity is more preferred than a large congregation, but all invitations will be filled if possible.

NOMINATING COMMITTEE. At the Williamsburg Annual Meeting, Society President John V. P. Lassoe, Jr., appointed a Nominating Committee in the Chicago area to propose persons for election to the Board this year. One clergyman and one lay person are elected by mail ballot from each of the eight provinces, with these two posts coming up alternate years. The By-laws state: "The members of the Society shall be encouraged to submit to the Committee, through its chairman, suggestions of names of individuals from their Province to be considered by the Committee for nomination to the Board of Directors. Such suggestions shall be received by the Committee up to 60 days prior to the date of the Annual Meeting." The Chairman of the Committee is The Rev. Canon William S. Van Meter who should be addressed: 65 East Huron Street, Chicago 11, Illinois. Canon Van Meter served as the Chairman for the Raleigh Founding Conference in December of 1959. To be elected this year: Prov. I - clergyman; Prov. II - clergyman; Prov. III - clergyman; Prov. IV - layman; Prov. V - layman; Prov. VI - layman; Prov. VII - clergyman; and Prov. VIII - layman. According to the By-laws all present Directors are elegible for reelection. At least two persons must be put in nomination for each position. Four more Directors are to be elected from the floor at the Annual Meeting.

MORE RESOURCES NEEDED! Forward Movement Publications is now considering publishing something in the field of Church & Race. If Churchmen expect guidance from the various agencies of the Church, and let this be known, it is more likely to be provided. Seabury Press is due to come out with a Senior-High School Unit study course on RACIAL PREJUDICE by the Rev. Cornelius C. Tarplee this month. What is your diocesan Department of Christian Social Relations doing? Write and ask. Is the diocesan monthly publication covering significant things in this field? Might the Bishop issue a special Pastoral Letter on the Church and its inclusiveness on Whitsunday? Expect & seek much!

CHURCHMEN IN ACTION

Churchwoman Mrs. Henrietta Tree is the representative of the United States on the United Nations Commission on Human Rights. In an address last fall she said: "The hungry and harassed of many lands are groping for what is a part of our own heritage, and we must leave no one with the false notion that we fear or seek to disown the ideas and aspirations that have sustained us as a nation of free men."

A Society member in Delaware who belongs to Alcoholics Anonymous was careful to see that AA groups in his city specified on their literature that they are "Interracial".

The Rev. Thomas H. Whitcroft of Edwardsville, Illinois, maintained a lengthy exchange of views with the editor of THE EDWARDSVILLE INTELLIGENCER, through its columns, following an attack made by the paper on ESCRU. **** Noteworthy, too, was the vigorous defense of the Prayer Pilgrimage by the newspaper of the Roman Catholic Archdiocese of Indianapolis following a blast from the local daily.

The Episcopal Chaplain at the University of California at Los Angeles, the Rev. C. Edward Crowther, challenged discriminatory practices in campus sororities when he said: "...all members of Sororities at UCLA should examine their consciences very closely and ask themselves whether they can continue membership and support of an organization which, in fact if not in theory, deprives them of the benefit of living on equal terms with a girl of any racial background."

The Rt. Rev. Albert R. Stuart, Bishop of Georgia, was a key figure in the negotiations which brought the opening of lunchcounters to Negroes in Savannah, Georgia, even before they were opened in Atlanta. Clergymen of that same diocese in Albany, Ga., were involved in discussions connected with the recent protests there.

A diocesan committee in Oklahoma is seeking the desegregation of schools affiliated with the diocese. SOUTHERN SCHOOL NEWS reports that the headmaster of the Casady School challenged the committee, taking issue with press reports on a resolution of the committee.

Society member, Bonnie Kilstein, (and our office assistant in the summer of 1960) was arrested Christmas Eve in a "sit-in" in Crisfield, Maryland. She writes: "It was a harsh reality to see repeated the same denial of 2000 years past. It was a cold and barren Christmas, with only Our Lord's Spirit as our comfort that truth shall make us free, someday." The policy in Crissfield was changed the next week!

A dozen clergy from the Carolina area held a two-day consultation in December on the Church, the South, their ministries and race. In another Southern diocese, an interracial lay group meets twice a month to talk about important matters: Such approaches are undoubtably repeated in more places than is known.

The Christmas card for a Michigan member carried a lovely family picture and the scripture: "Behold, how good and joyful a thing it is for brethren to dwell together in unity!"

ORGANIZATIONAL MATTERS

Board Meeting. As members receive this newsletter the Society's national Board of Directors begins sessions at Seabury House, Greenwich, Conn., January 12-13. The Board is elected by the membership: sixteen on a provincial basis, and eight at large. Chairman John V. P. Lassoe, Jr., will preside, with most Directors planning to be in attendance.

Is Your Renewal ~~Is~~ Due!? Perhaps yours isn't just now, or you've just paid up and are a member in good standing, but others have tucked our reminder notices and letters under the Christmas card pile and will hear from us again! To save the national office unnecessary expense and time, please respond promptly when your notice arrives. Also, please note, while we are most grateful for contributions to special appeals, it should be pointed out that such do not cover dues unless you have requested that a portion of a contribution go for this. If you use one of the return envelopes for a special appeal and want a part of your check to go for dues, you must specify accordingly! For any mistakes we've made (and there have been some), our apologies. Write us if we're in error, please.

Auditor's Report. Any member may inspect a copy of the handsomely prepared report on our receipts and expenditures record prepared by the F. W. Lafrentz & Co. for 1960 by calling at the office. The same is being prepared for the financial records of 1961. They find all in order! The crucial question is - As we are weaned from the largesse of our chief benefactor (a foundation), will the base of support from lots of small contributions (and a few healthy-sized ones!) give Lafrentz enough to report on? For the year just past, yes. You will help to determine the future.

Gifts In Lieu. Instead of sending a Christmas remembrance several members pioneered for us and sent contributions to ESCRU in the name of the person remembered. Another year and we'll have some attractive card for this purpose. For the present we write both the sender and the one honored accordingly. Consider this for yourself.....be sure to specify whether the contribution is for our general operating account (an important department!) or the Prayer Pilgrimage Appeal Fund.

Envelopes Addressed. Within the last several months we have addressed envelopes from our membership stencils from selected regions for Modern Community Developers, Inc. and the Southern Regional Council. The former is building integrated housing. The latter is one of the South's most important interracial organizations. This will be done further where such assistance is merited and where the information received will be of interest to members. We have offered no suggestion of the capacity of our members to commit themselves further financially or otherwise.

A Blank Wall Filled! Our thanks to a member in Florida for sending us an attractive print of an interracial theme, together with the offer to pay for framing! This was in response to the note in the last newsletter. Other walls need friends too!

Membership Growing. The Society membership now numbers well over two thousand. This is ahead of original expectations, but against the figure of three million Episcopalians it is small. We've got a lot of room to grow in! Individual churchmen passing along the Society's Statement of Purpose can do a lot to change our total.....this is the way we've grown thus far. Parishes which run a piece on the Society in the Bulletin or make a genuine effort in distributing literature have played a key role in our growth. Is there a Society poster up on a bulletin board in your parish house and/or in the vestibule to the Church? Have you a supply of Purposes? ESCRU literature is purposely suited to being carried in pocket or purse, easily mailed, and handed on.

Projects Pending. Program approved by the Board and awaiting implementation include: Southern Field Program, Survey of Admission Practices at Church Schools, and Project K - a program designed to avail the Church of lay leadership from specialized fields of sociology, journalism, intergroup relations, community planning, etc. Also pending completion is a new brochure on the Society. All of this when we have sufficient staff (volunteer or paid) or present personnel has sufficient time!

Bishop of Chicago Commends. Commenting on the kneel-in program sponsored by the Chicago Chapter, Bishop Burrill said in the November, 1961, News Bulletin for the Diocese of Chicago: "ESCRU can be good for us all. We are in a time of turmoil and need to be reminded we cannot say one thing and do another. We may not all agree with every method by which ESCRU seeks to attain its goal but we do agree with the goal. We cannot treat a visit by ESCRU members as an invasion. It is a visit by fellow-members of our Lord's Body."

Thank you, Booth Volunteers! Special thanks to all of the members in the Detroit area who helped staff the Society's exhibit booth in Cobo Hall during General Convention. Also, special mention is due Mrs. Norris Warren for scheduling volunteers, the Rev. Joseph A. Pelham for a hundred-and-one details, Grace Dillingham of New York and Patsy Morris of Atlanta for watching throughout over funds, supplies and people, Ann Orlov and others of Boston for preparations, and Mr. Weist and the Rev. Plummer Whipple of the Convention staff for putting up with us all and being so nice about it.

Employment Referrals. Parishes or priests interested in helping to change the patterns of clergy placement which have been along traditional racial lines may advise the Society's Executive Director in confidence of this. The chance will come to put pastor and people in touch with one another along new lines. White and Negro clergy willing to accept calls that break the pattern are on the increase, but in a transitional period the channeling of referrals will come informally and through means such as this.

Available Materials. The following page lists items produced or printed by the Society. Other materials on the Church and race, etc., may be obtained from our National Council and the National Council of Churches. Later we will endeavor to supply comprehensive bibliographies and listings of other materials.

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 Forsyth Street, N. W.
Atlanta 3, Georgia

1/3/62

AVAILABLE MATERIALS

This is a listing of materials printed by the Society only. Except for the posters all items will conveniently fit into envelopes of the #10 size. In addition to the cost per item postage will be charged on all orders not accompanied by payment. Quantity supplies of FREE items will be provided where there is to be distribution for promotional purposes.

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ON THE SOCIETY:

1. Statement of Purpose. The Society's most basic document. Membership application form attached. FREE.

2. By-laws. Adopted at the First Annual Membership Meeting, January 8-11, 1961, Williamsburg, Va. Each member provided copy upon joining. Additional copies 5¢ each.

3. Blue Descriptive Brochure. Chiefly containing reprints of news stories on Raleigh Founding Conference and excerpts from Statement of Purpose. FREE.

4. Thompson Reprint. Article in THE CHURCH MILITANT, publication of the Diocese of Massachusetts, April - 1961, by the Rev. John W. B. Thompson, Jr., who was then Chairman of the Greater Boston Chapter of ESCRU. Generally on the needs facing the Society, and specifically on the Boston chapter. FREE.

5. Perfect or Possible. Full-page editorial in THE LIVING CHURCH following formation of the Society on one side, and a letter from the Executive Director to the membership on other side. Both concerned to hold together elements suggested in title of the editorial, differences in immediate needs regionally, FREE.

ON THE PRAYER PILGRIMAGE:

6. Two Statements from The Prayer Pilgrimage to the 60th General Convention of the Episcopal Church. The statement prepared in New Orleans, describing the itinerary and reasons for it; and the statement read at the Society's Convention Dinner reviewing the pilgrimage and its focus. 3¢ each.

7. For the Church's Sake. Reprint of article in November 1, 1961, issue of THE CHRISTIAN CENTURY by the Rev. Merrill Young. On the theological significance and dynamic of pilgrimage. 2¢ each.

8. Prayer Pilgrimage Appeal Fund Envelope. For sending contributions for expenses of appeal procedure for fifteen priests arrested in Jackson, Mississippi. Brief explanation of background and need included on envelope. FREE.

(over)

Available Materials continued:

NOTABLE REPRINTS:

9. This I Believe. Talk before an adult class at Trinity Presbyterian Church, Atlanta, by Dr. Haywood N. Hill. Reprinted from THE PRESBYTERIAN OUTLOOK. Excellent as initial challenge for the conservative reader. 2¢ each.

10. Let Us Kneel-in Together! Editorial in August 24, 1960, issue of THE CHRISTIAN CENTURY. Good theological guideposts for kneel-in activity. Should be read by all involved. 3¢ each.

11. The Myth of the Moderates. Article by Dr. Thomas F. Pettigrew in THE CHRISTIAN CENTURY, May 24, 1961. Analysis of various positions with regard to social change. Should be read by all who believe time will solve everything! 3¢ each.

12. Marriage Across Racial Lines. Excellent treatment of this explosive subject. A reprint of document issued by Council for Christian Social Action, United Church of Christ. 5¢ each.

13. Are Southern Ministers Failing the South? Fair and reasonable answers to this question by a Methodist minister, the Rev. Robert Paul Sessions, in THE SATURDAY EVENING POST issue of May 13, 1961. 5¢ each.

POSTERS:

14. Capetown Placard. Depicting Our Lord on the cross, bisected by barbed-wire fence with 'Segregation-Separation' emblazoned thereon. Darker and lighter colored figures kneeling on either side. In dark blue color. 5¢ each. (8½ x 11)

15. ESCRU Poster. Society's hallmark scene of figures kneeling before Christ whose hand is raised in blessing. "Behold how good and joyful it is......" (etc.) across top. Includes brief description of Society at bottom. Blue. 25¢ each. (17x22)

MIMEOGRAPHED ADDRESSES and OTHER RESOURCES:

16. The Church Dilemma and Social Action. Address by Dr. Thomas F. Pettigrew at the Society's Founding Conference. 10¢ each.

17. The Law and Civil Disobedience. Address by Harris Wofford, Jr., at Notre Dame in 1959. Mr. Wofford is now Presidential Adviser in Civil Rights. 10¢ each.

18. Address By the Archbishop of Capetown. The Most Rev. Joost de Blank's address before the ESCRU dinner at General Convention, Detroit, September 20, 1961. 10¢ each.

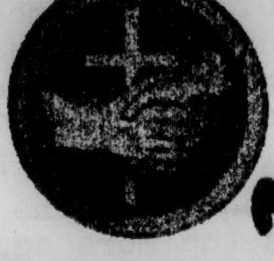
19. Property Values and Race: The Facts. Single sheet of data on this subject, compiled by the Community Relations committee of the American Friends Service Committee and issued by the Greater Boston Chapter of ESCRU. FREE.

20. Questions for Local Chapters and Others. Guidelines for parish and chapter action, program, etc. Prepared by Greater Boston Chapter of ESCRU. FREE.

A WAY TO WITNESS

(FRONT)

Brothers



A Fellowship of Commitment

WEAR THE PIN (Actual size: ½" diameter)

KEEP THE CARD IN YOUR WALLET OR PURSE.

WHEN FRIENDS ASK ABOUT THE PIN, LET THEM SEE THE CARD.

THEY MAY WANT ONE TOO, OR THEY MAY DROP THE MATTER THERE AND THINK A BIT.

(INSIDE)

"Behold, how good and how pleasing it is for brothers to dwell in unity!" Ps. 133

Believing that God desires our unity and that He came in Jesus Christ for the salvation of all men, we know that we forget our brotherhood whenever we are estranged from Him. We ask His forgiveness and seek to renew relationships in the shadow of His Cross where racial barriers are dissolved by His Love that reconciles us to Him and to one another.

We know that when we are separated from one another, we are separated from Jesus Christ Himself. We will seek continually to accept all men as we have been accepted by Him and we will strive to mend His Body which our divisions have broken.

We ask others to join us at the foot of His Cross in this clasp of brotherhood.

We ask Our Lord Jesus Christ to use us as He will in the task of eliminating racial barriers from His Church and from society. Remembering that He gave Himself that we might be one in Him, we will endeavor to give ourselves totally to Him and do whatever He may require of us in this commitment. We will use every opportunity as we are able to remind others of our unity in Him and of His love for them.

In silent unison and in our churches, we will pray that rules and patterns of separation and discrimination may fall before the love of Our Saviour. We will pray for the unity of mankind—for our brothers of every race and nation the world over. We will pray for unity in our own land—that the power of God's love in uniting persons of all races and cultures may be known as we seek to conform our practices to our democratic and Christian heritage.

As a visible sign of our intentions, we have a symbol that may be worn, that others may know our concern and that we may be strengthened in this commitment as we meet one another.

*Wear the symbol of **BROTHERS** regularly. It will bring rewarding opportunities to tell others of your concern. If another should wish to join you in this commitment, give him this card and your pin and write for another for yourself, or let him note how he may obtain one.*

***BROTHERS** represents only what you see here. It is not an organization and does not have a program, dues, or officers. It is an informal fellowship of Christian men and women who share a common commitment and who seek to implement their concern as they are individually able.*

*Additional cards and pins, in either lapel or clasp types, may be obtained from any one of four sources. Write **BROTHERS** at:*

***P. O. Box 1983**
Nashville, Tenn.*

***P. O. Box 548**
Atlanta 1, Ga.*

***412 Sycamore St.**
Cincinnati 1, Ohio*

***21 W. Superior St.**
Chicago 10, Ill.*

Contributions to help with costs are needed and will be welcomed, but the only requirement is a sincere intention.

(BACK)

"BROTHERS" PINS AND CARDS ARE BEING DISTRIBUTED BY THE NASHVILLE OFFICE OF THE NATIONAL COUNCIL OF CHURCHES, THE NATIONAL CATHOLIC CONFERENCE FOR INTERRACIAL JUSTICE, THE EPISCOPAL DIOCESE OF SOUTHERN OHIO, AND THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY. IT IS NOT A MEMBERSHIP EMBLEM FOR ANY OF THESE GROUPS. A CONTRIBUTION OF 50¢ per pin and card WILL COVER COSTS.

WRITE FOR YOURS

SIGNIFICANT QUOTES

Ralph McGill's Column in the ATLANTA JOURNAL-CONSTITUTION, December 10, 1961, carried the following letter "...from a lady who is a member of a church in Augusta, Georgia, which recently refused admission to two Negro graduate students, one an ordained minister." She said:

"I somehow felt I had to write. I cannot talk here because there is so much feeling and one is misunderstood and misquoted. The strangest thing has happened. It is sad and grows the more so. Our church is not the same since we turned those people away. I am convinced it will never be the same. We go to church. We explain it away. We say they (the students) tried to get in just to show off or to get into the newspapers. We say all that and we nod and agree that this is how it was. And perhaps it was.

"I must confess I was one who originally approved denying admission. I knew it would disturb our church if they were admitted. But what I did not know was that it would disturb it more deeply and fundamentally to keep them out. But it is true. It has happened.

"One or two of us have talked about this. We are sure many feel it. Even the more angry and determined members protest too much. They reveal by their very anger and protestation their own sense of guilt and the uncomfortable fact that a Christian church can do what we have done.... We will never again feel so warm and good about our church....or about one another. Worst of all, I am sure our pastor, poor man, knows this - and like us, is troubled."

A Member in Virginia Writes: "It has been another matter of concern to me that, to my knowledge, the Society has not stressed the necessity of its members examining themselves for prejudice and lack of Christian love for the prejudiced. It would seem to me that this would be what would set us aside uniquely from mere social reform movements...."

Bishop Ambrose Reaves, once Bishop of Johannesburg, writes in the CHRISTIAN CENTURY of December 13, 1961: "....it is not surprising that some church members who were once quite vocal in their opposition to apartheid have become silent, and that many of them now busy themselves with narrowly ecclesiastical affairs...." and "...In those times in which the church had more freedom than it now has, it was largely content to reproduce the social pattern of secular society in the life of the Christian community." (Bishop Reaves' address before the House of Bishops, Dallas, November 16, 1960, is one of the best statements available concerning the Church and race. Entitled "Members of a New Race" it may be had for 10¢ from the ational Council, 281 Park Avenue South, New York 10, N. Y.)

HE EPISCOPALIAN said of the Prayer Pilgrimage in its November, 1961, ssue that it "...was undoubtedly more effective in focusing the ttention of the Episcopal Church on segregation, and in focusing he attention of the nation and the world on the fact that the piscopal Church *is* concerned about segregation, than any single t so far in recent church history."

RESOLUTION ADOPTED UNAMINOUSLY BY SEWANEE'S BOARD OF REGENTS ON OCTOBER 12, 1961

(See First Page)

WHEREAS the Board of Trustees has made it clear that there are no racial barriers to entrance to the University **of the South**, and

WHEREAS there have already been Negro students in the School of Theology, and

WHEREAS Claramont Restaurant and Sewanee Inn were built by the University for the comfort, convenience and pleasure of the students, faculty, and visitors of the University, and

WHEREAS Claramont has become a popular gathering place for students and faculty, but is operated under lease as a private enterprise, with option for renewal of the lease by the Manager for a period of six more years, and

WHEREAS there is in the lease no specific mention of any policy with regard to the serving of Negroes, but it is required that Claramont shall be operated in the best interests of the University, and

WHEREAS two Negro students have, during the past summer, been refused service at Claramont, and

WHEREAS a committee representing the faculty of the University has petitioned the Board of Regents to request Mrs. Shoemate as Manager of Claramont and Sewanee Inn to work out a policy of serving students, faculty, and official guests of the University without regard to race, and

WHEREAS the report of Booz, Allen and Hamilton has recommended renegotiation of the terms of the Claramont-Sewanee Inn lease for other reasons, and

WHEREAS it is the desire of the Board of Regents to remove undue pressures of decision in this matter from Mrs. Shoemate, and to fully protect her interests and rights under her lease, THEREFORE, BE IT

RESOLVED that the Board of Regents respectfully requests Mrs. Shoemate to consider, in conference with the Vice-Chancellor and the President of the Board of Regents, whether and under what conditions she would adopt a policy of catering to students, faculty, and official guests of the University without regard to race or color; making clear to Mrs. Shoemate that we recognize she has a legal and bidding contract, and that there has been no act on her part which we consider as legal or moral ground for breach of her contract. AND BE IT FURTHER

RESOLVED that the Vice-Chancellor and the President of the Board of Regents be authorized to confer with Mrs. Shoemate in working out such a policy if it be possible, and to prepare in conference with her such proposed renegotiation of her lease as might be necessary to protect her interests under such new policy, and that they be requested to report back to the Regents at our next meeting, AND BE IT FURTHER

RESOLVED that the faculty committee be informed that such conferences are under way, with the urgent request that negotiations be left entirely up to Mrs. Shoemate, the Vice-Chancellor, and the President of the Board of Regents, and that they assist us in protecting her from pressures with regard to her decision, and in the avoidance of publicity in this matter.

For your information — John

Room 200 - ESCRU
5 Forsyth St., N. W.
Atlanta 3, Ga.

1-23-62

TO THE PILGRIMS:

The goldenrod mimeo stock is to lift your spirits and save on our letterhead! The enclosure may do the same - a resolution of the Society's Board from our meeting at Seabury House recently. Most of you are Society members and should be receiving our latest newsletter which contains a long "Editorial Report" on Sewanee from yours truly. Naturally, if you aren't a member you can either join and receive the same or let me know and be sent a special copy! (This is called low-pressure salesmanship directed toward one or two of you.)

I shall endeavor to arrange another visitation to Sewanee in February following the Regents' meeting to ascertain the nature and effect of their decision. If it can be concluded thereby that any tourist of any color can be served, then the case is closed. If not, then I advise you and, indeed, our entire membership, and massive and sustained sit-ins can be launched. Possibly the "Sewanee Seven" should be sent in first. It would only be for these that I could justify the expenditure of funds for expenses in connection with the trip, and even then I'm not sure if we could afford all seven. I may have to start with men closer to Sewanee as in the October visit.

To date the Prayer Pilgrimage Appeal Fund has approximately $7,800.00 in hand. In addition to the initial outlay of $7,500.00 for bail, major expenditures have included: Printing - 831.73, Tel.& Tel. - 508.73, Arraignment Travel - 1,970.53, and lesser amounts coming to about $200.00. You can figure, then, what our total receipts have been thus far, what we've spent since September 13th, and have some idea of what more will be needed. In consultation with Carl Rachlin and others in NYC we're trying to get a figure of the total which may be needed to take the cases on up to the Supreme Court. In short, the original amount projected as needed cannot be reduced, and, in fact, may be more than the total need of $40,000.00.

Plans are underway for the appointment of a national Prayer Pilgrimage Appeal Fund Committee, to be appointed by ESCRU's President, John Lassoe. The Rev. Gerald Humphrey of Beacon, N. Y., may move to NYC for the duration through May to take in hand a two-fold effort: establishing a net-work of key persons around the country who can bring the need to the attention of parishes, and a program of personal visits to Churchmen in the northeast who could afford to give substantially. The net-work aspect may prove to be invaluable if sufficient funds are not in hand and we have to return to jail. The Church would be moved then, in all likelihood, to renew the outpouring of assistance it saw offered in September during the initial crisis. I think we have a responsibility to look for funds from all potential sources now, but at the time of trials I believe we should wait upon the interest and support of the Church rather than go looking then for large gifts or loans. There is more involved in this than keeping us out of the clink!

I have just written Bishop Pike and asked him if he would be able to come to Jackson for one or more of our trials to provide consultative legal advice for Carl Rachlin. Carl would like this for practical purposes. Obviously there is more involved than legal counsel! It seemed that I had consensus in this from most of the pilgrims I've seen in recent months. Certainly there are many issues of protocol and episcopal intergroup relations involved in something like this for the Bishop, so I do not know what to expect. I would keep it confidential that we have asked him, whether he accepts or not. If he accepts, I'll handle the matter of how we let this be known - if in advance at all.

Yet another way by which the Church might stand with us during the trials - in terms of visible support beyond our mutual support of one another - would be for character witnesses for each of the fifteen to be present: our bishop, seminary dean, some distinguished layman who knows us, etc. Carl thinks this might be good from a legal standpoint, although it would not materially improve our image before the court nor is it clear that our "character" is on trial as such. The value of it, possibly, would be just in bringing the Episcopal Church in still more representative fashion to stand with us in Jackson.

Would the fifteen men involved think over this character witness matter and let me know how they regard it, who they would seek to have come in their behalf, etc. Indeed, it would be well to tentatively approach such persons and ascertain their willingness to come if we get clearance on it from Rachlin. It would be my judgement that we would use PPAF monies for the travel of such persons were assistance needed.

For a thorough conference with Rachlin the fifteen on trial should arrive in Jackson early on May 6th. I think it will be well for us to be there throughout the trial period for all, too. It is also my suggestion that we go back into jail following each trial and conviction and remain there until all have been processed, bailing out together. This is assuming the money is in hand before May 7th. If not, we go back awaiting further contributions

It would be good to have as many other men from the pilgrimage present in Jackson during the trials as can come. I am not sure about the expenditure of PPAF monies for this, but incline toward believing it is a valid application of funds. Your thoughts on this will be welcomed. Could you come under any circumstances?

As May approaches you will be hearing from me with regularity again! You can help by giving prompt replies to matters requiring your answer, opinion and advice. I will have to make decisions on many things alone, but with your steady feedback it will not be so difficult.

Faithfully,

(Rev.) John B. Morris

McCOY, MING & LEIGHTON
ATTORNEYS AND COUNSELORS

FRANKLIN 2-1106

FLEETWOOD M. McCOY
WILLIAM R. MING, JR.
GEORGE N. LEIGHTON
WALTER K. BLACK
CHAUNCEY ESKRIDGE
MARK E. JONES
ARCHIBALD T. LE CESNE

ROBERT L. TUCKER
HAROLD E. McDERMID
ELLIS E. REID

JOEL HUNTER BUILDING
123 WEST MADISON STREET
CHICAGO 2

RECEIVED
FEB 8 1962
VLADECK & ELLIS

February 7, 1962

Carl Rachlin, Esq.
Attorney at Law
280 Broadway
New York 7, New York

Re: State of Mississippi v.
James Jones

Dear Mr. Rachlin:

Father Jones of St. Leonard's House here in Chicago has communicated with me with regard to the case pending against him in Jackson, Mississippi and set for trial in May, 1962. Some time ago I offered to help Father Jones because of my interest in the subject involved and because of my knowledge of the situation generally in Mississippi. Please let me know how I can be of help, directly in preparing and appearing for trial in Jackson, Mississippi, or in any other way.

Very truly yours,

George N. Leighton
George N. Leighton

GNL/jh
cc: Father James Jones

Dear Mr. Leighton
Thank you for your
kind letter of the seventh
inst. I shall certainly be in
touch with you when matters
have jelled a bit more Sincerely,

copies to Rev John
B
Morris
to Rev James Jones
St Leonard's
House
Chicago

CIVIL LIBERTIES DOCKET

LEGAL REPORTER SERVICE ON CIVIL RIGHTS AND LIBERTIES

Published four times each year by the National Committee on Constitutional Rights and Liberties of the National Lawyers Guild

OSMOND K. FRAENKEL, Chairman of Docket Board
ANN FAGAN GINGER, Editor

NEW ADDRESS:
1908 Virginia Street
Berkeley 9, California

~~2019 Vine Street~~
~~Berkeley 9, California~~
~~LAndscape 5-7859~~

FEB 10 1962

Dear Mr. Rachlin:
Your case involving a question of civil rights or civil liberties was described in the latest issue of the CIVIL LIBERTIES DOCKET. The page on which your case was reported is enclosed. I hope you will let me know if the case was inadequately or inaccurately reported so that I can make corrections in the next issue. (The DOCKET is published four times each year, from October to July, and each issue contains the latest developments in the cases reported.) I also need to know the present status of the case.

The CIVIL LIBERTIES DOCKET is the only reporter service in the field of civil liberties and civil rights cases. If you want to save time in research on constitutional law problems, you might try using the DOCKET. It is really up-to-date, reporting cases from the date of filing, rather than from the first reported decision. It has this unique feature: it includes names and addresses of counsel and amici curiae, to assist lawyers in communicating with each other, exchanging briefs and pleadings.

As you can see from the enclosed Table of Contents, the DOCKET describes almost 500 cases involving First Amendment freedoms of speech, press and religion; Fifth Amendment cases on denial of due process in criminal proceedings; Fourteenth Amendment integration and civil rights cases. We also try to include all the unclassifiable cases which may never be officially reported, but which may prove helpful to counsel having somewhat similar problems.

We hope you will want to join the lawyers, law professors, judges and law libraries which already subscribe to the CIVIL LIBERTIES DOCKET. (The subscription blank is on the blue folder, enclosed.)

Sincerely,
Ann Fagan Ginger
Ann Fagan Ginger, Editor

- -

Mailed before FEB 24 1962

CIVIL LIBERTIES DOCKET
2019 Vine Street
Berkeley, California

The present status of my case is as follows:
541.22d Mississippi v. Rev. Morris

The fifteen cases will be tried early in May. By the way all the CORE are mine since I am gen'l Counsel for CORE

February 12th, 1962

George N. Leighton, Esq.
Joel Hunter Building
123 West Madison Street
Chicago 2, Illinois

Re: State of Mississippi v. James Jones

Dear Mr. Leighton:

Thank you for your kind letter of the 7th inst.

I shall certainly be in touch with you when matters have jelled a bit more.

Sincerely yours,

CARL RACHLIN

CR:rk
cc: Rev. John B. Morris
Rev. James Jones

INGRID TILLOTSON
OFFICIAL COURT REPORTER OF THE COUNTY COURT
OF HINDS COUNTY, MISSISSIPPI
COUNTY COURT HOUSE
JACKSON 1. MISSISSIPPI

OFFICE PHONE: FL 2-3938
RES. PHONE: . . EM 6-6092

RECEIVED
MAR 9 1962
[illegible] S

March 6, 1962

Honorable J. A. Travis
Attorney at Law
Electric Building
Jackson, Mississippi

Honorable Paul Alexander
Attorney at Law
Deposit Guaranty Bank Building
Jackson, Mississippi

Honorable William M. Kunstler
Attorney at Law
511 Fifth Avenue
New York, New York

Honorable Carl Rachlin
Attorney at Law
280 Broadway
New York 7, New York

Re: State of Mississippi vs.
Henry J. Thomas
Cause No. 12,795

Gentlemen:

This is to inform you that I have this day filed the original and one carbon copy of the transcript of my notes taken in the case above captioned with the Circuit Clerk of Hinds County, at Jackson, Mississippi.

Very truly yours,

Ingrid Tillotson

Ingrid Tillotson
Court Reporter

RECEIVED
MAR 14 1962
VLADECK &

cr

KUNSTLER & KUNSTLER
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK 17, N.Y.
MURRAY HILL 2-8318

WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER

CABLE ADDRESS
"KANDKLEX"

March 13, 1962

Jack Young, Esq.
115 1/2 North Farish Street
Jackson, Mississippi

Re: Mississippi v. Thomas
Case No. 12,795

COPY

Dear Jack:

I have just been informed by Mrs. Tillotson that the transcript of her notes in the above case was filed with the Circuit Clerk of Hinds County on March 6, 1962. I have just written to her in order to ascertain the cost of a copy.

Please let me know at once what must be done to bring this appeal on for argument and all pertinent information as to time schedules, briefs and the like. If you have a sample brief used in another case, I would also like to look at it.

I would appreciate a prompt reply to this letter.

Please give my best to Messrs. Hall and Brown and to your charming wife.

As ever,

William M. Kunstler

WMK:jm
CC: American Civil Liberties Union
Carl Rachlin, Esq.
Legal Defense Fund of the NAACP

McCoy, Ming & Leighton
ATTORNEYS AND COUNSELORS

FLEETWOOD M. McCOY
WILLIAM R. MING, JR.
GEORGE N. LEIGHTON
WALTER K. BLACK
CHAUNCEY ESKRIDGE
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ARCHIBALD T. LE CESNE

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HAROLD E. McDERMID
ELLIS E. REID

FRANKLIN 2-1106

JOEL HUNTER BUILDING
123 WEST MADISON STREET
CHICAGO 2

RECEIVED
APR 6 1962
[illegible] & ELIAS

April 4, 1962

Carl Rachlin, Esq.
Attorney at Law
280 Broadway
New York 7, New York

Dear Mr. Rachlin:

I estimate that the cost of filing the law suit you have in mind in the Greyhound Bus and Illinois Central Railroad matter will be about $40.00 for docket fee and service of summons.

In addition, it would be necessary to budget between $350.00 and $400.00 for pre-trial discovery and stenographic charges in connection with preparation for trial. Thus, the total cost prior to trial would be approximately $500.00.

In addition, I would estimate a minimum for the time to be devoted in preparing for trial to be $1,200.00.

If the case that you have in mind is one which has to be handled on a purely civic basis, the latter item for legal services, of course, would be eliminated if legal services are donated freely. As I indicated in my last letter to you, we presently represent several civil agencies and we now have some rather serious cases which we are handling without compensation. I doubt very much that we can undertake any further litigation of this kind until we are through with at least one which has required rather extensive legal services.

In addition, let me add that I have been appointed in two death penalty cases in which I am serving indigent defendants.

Let me hear from you if you think we can be of help along the lines I suggested.

Yours very truly,

McCOY, MING & LEIGHTON

By George N. Leighton
George N. Leighton

GNL/as

April 12, 1962

George N. Leighton, Esq.
McCoy, Ming & Leighton
123 West Madison Street
Chicago 2, Illinois

Dear Mr. Leighton:

Father Pierson called me last night indicating that you and Father Jones had been discussing some of the problems in Jackson.

As you perhaps know, the trials will be held the weeks commencing May 7th and May 14th, 1962. I understand that you are a member of the Mississippi Bar. We hope to have four or five attorneys in Jackson and I understand that you have offered your services to try some of the cases. I would appreciate it if you could advise me which time would be best for you during this two week period to come to Jackson.

Please note that last August we began the processing of papers, motions and charges for the jury, and they have been modified over the months, so that all this work has been completed. At the present time, what has to be done by the attorneys is the preparation of the defendant and witnesses, if any, cross-examination and opening and closing statements.

It is my present intention that each attorney try three or four cases.

I would appreciate your letting me know whether you will be available to go.

As Mr. Morris and I were discussing the other day, giving serious thought to civil suits for damages for those (all we hope) who are acquitted at the trials. Similarly, when such convictions as may occur are reversed on appeal, we plan to do the same.

Very truly yours,

CR:mw CARL RACHLIN
[illegible]

cc: Father James Jones
Rev. John Morris
Father Robert Pierson

[1962, April]

al Society for Cultural and Racial Unity
TH STREET, N.W., ATLANTA 3, GEORGIA

nformation

I'm Sending The
d to Rosenberger, etc.
now St. Louis man.
gotten Abrams on The
attorney because he's
volved in County unit
— Sorry for changes.
ep faith

THE REV. JOHN B. MORRIS
Executive Director

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
Room 200, 5 Forsyth Street, N.W.
Atlanta 3, Georgia

FURTHER INFORMATION ON THE TRIALS OF THE PRAYER PILGRIMAGE PRIESTS:

On Monday, April 9, 1962, Judge Russell Moore, of Hinds County, Mississ
acting on a request by Mr. Jack Travis, Prosecuting Attorney, dismissed char
against the fifteen Episcopal Clergy, arrested last September. Mr. Travis m
this request, "out of respect and admiration for the Episcopal Church and Mi
sippi's Episcopal Churchmen." The dismissals would "permit each of these de
dents to return to their priestly duties."

The Rev. John B. Morris gave the following statement to the press after
hearing of the dismissal. "We welcome the recognition of our innocence of B
of the Peace charges, but regret the inconsistencies of Mississippi justice,
in that charges against others similarly arrested were not dropped." He fur
said: "...(we) believe that the ruling should apply to laymen who were no mo
guilty than we were. The Episcopal Church does not require special treatmen
but expects justice for all."

On April 10, Mr. Morris announced that nine of the Prayer Pilgrims were
returning that day to Jackson to protest, "one of the most flagrant instance
clerical immunity which can hardly be respected by Churchmen or others conce
for justice in Mississippi or elsewhere." Upon their arrival in Jackson, th
learned that Judge Moore had reversed his decision of the previous day, sayi
"It is with reluctance that orders of dismissal which were to be entered, sh
not be, for I deem it necessary to withhold same, in order to uphold the int
of this court. Each of these cases shall come on for trial and be disposed
in the same manner as the others." He further said: "Orders of dismissal w
to be entered on the recommendation of the prosecuting attorney, as is the u
custom. However, due to the political connotations which have arisen by the
proposed orders of dismissal, I am of the opinion that it is necessary to re
them."

Prior to leaving Jackson on April 11, the nine Pilgrims made the follow
statement: "We came to Jackson yesterday, having been declared innocent, as
deed, we feel we are. Our intention was to plead for the acquittal of all p
sons so arrested. We have seen the Prosecuting Attorney, but in view of the
Court's reversal, we will not call upon Judge Moore."

Mr. Morris has indicated that he believes that the Mississippi authorit
are confused in their efforts to avoid further publicity on this case. He a
believes that the judge may have been under some pressure from local sources
reverse his decision. The statement from E.S.C.R.U. may have further irrita
him. Mr. Morris said that the original dismissal shows the inconsistencies
the administration of justice in Mississippi, and the reversal of the dismis
shows the "capricious nature" of the judicial process there.

The nine Pilgrim priests are presently on their way to Sewanee, and you
be informed of any developments in that area.

Obviously, the Prayer Pilgrimage Appeal Fund is still in operation as
trials of the fifteen priests will continue as originally scheduled in May.

April 11, 1962

THE OFFICE

extra Copies
nclosures in
e you need
hem

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 Forsyth St., N.W., Atlanta 3, Ga. - JA5-7975

April 30, 1962

TO PILGRIMS, BOARD MEMBERS, AND LOCAL CHAIRMEN:

Events earlier in April demonstrated the inconsistency of Mississippi justice and then its capriciousness. Now the essential instability of the judicial system there is shown in their decision to transfer the time for some or all of our trials to an as yet undesignated period.

Our attorney in New York, Carl Rachlin, reported to me by phone this morning that the judge has decided to go out of town next week, requiring the determination of new dates.......On Rachlin's advice I talked with Attorney Jack Young in Jackson and ascertained this much: The trials which were set for the week of May 7th will not be held then. This period covered ten of the arrested pilgrims. The trials set for the first three days of the week of the 14th are still on but subject to change. No time has been given for the trials originally set for the first week. Such dates and confirmation on the second week's trials might be obtained by Young or other attorneys in Jackson in the next few days, but even the question of ascertaining these facts could be protracted. Young suggests the possibility of new dates being set beginning the week of May 21st or even as late as sometime in June. He will advise us here as soon as possible of further word on the matter. I leave tomorrow for three days in Wisconsin and will call him again on Friday if nothing further is known.

Later this afternoon I reached the CORE representative in Jackson, Tom Gaither, who confirmed all of the above but added that he had overheard the Prosecuting Attorney ask the Judge if some other jurist might not take the cases in his absence. Gaither thinks that some of the authorities want to get on through them, whereas the judge for unknown reasons seems to be forcing an interim between the last of the regular Freedom Rider trials now terminating this week and our trials. (We were the last arrested in the Freedom Rides, for the ICC ruling came ten days following our arrests.) Gaither does not think the judge will turn the cases over to another judge for this might make it appea he was avoiding responsibility.....pursuant to our run-around several weeks ago. I WOULD WARN THE PILGRIMS, HOWEVER, TO BE PREPARED FOR WORD TOWARD THE END OF THIS WEEK THAT IT IS ALL SET AS ORIGINALLY SCHEDULED BEGINNING ON MONDAY, MAY 7t This seems unlikely, but one can not predict the turn of events in the mind of the court! Any such development naturally will see us rushing to the phone and telegraph wires that plane reservations might be renewed. Likewise, we will notify you about those trials set for the week of May 14th as soon as their status is known and any dates will be a matter communicated to you immediately.

This is another sign of the death of a system.......I am sorry for everyone's schedule and planning that there is so much uncertainty involved. As soon as definite dates are set again I'll ask non-arrested personnel to advise me of whether they can get to Jackson or not. This memo today was to be for just that purpose in preparation for next week.

In God We Trust!

Faithfully,

John

The Rev. John B. Morris
Executive Director

An earlier memo is enclosed for any trying to keep it all straight!

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
Room 200, 5 Forsyth Street, N.W.
Atlanta 3, Georgia

May 2, 1962

TO PILGRIMS, BOARD MEMBERS, AND LOCAL CHAIRMEN:

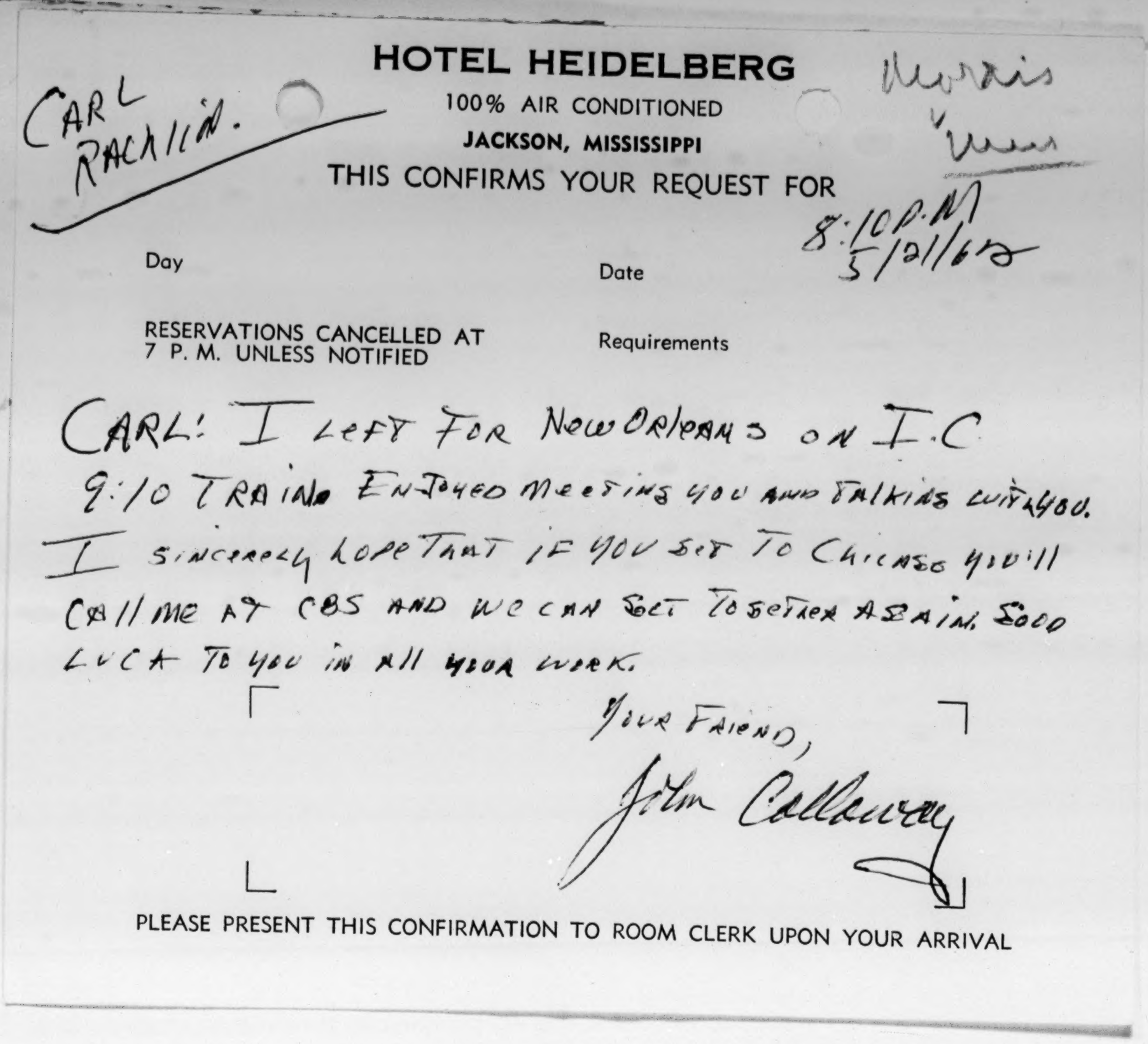
Events continue to demonstrate the inconsistency, instability, and undependability of Mississippi "justice". A call from Mr. Jack Young, one of the lawyers in Jackson, late on the afternoon of May 1, 1962 (Law Day or May Day, depending on your vantage point), indicates that all of the trials of the Pilgrim clergy have now been rescheduled. The period of time in which they will take place is now May 21 - June 1. Mr. Young says that he believes that there will be no further changes. Only time will tell as to whether this prophecy is correct.

JBM is presently out of town, but will communicate further with the Pilgrims when he returns on May 4. This memo is only to let you know the latest news, so that you can once again make new plans with the airlines, vestries, etc. He asks that you again notify him of your travel plans, the length of time that you will be in Jackson, etc.

The Revised, and Perhaps Standard, Version of the Trials in Hinds County Court, Jackson, Mississippi, May 21 - June 1, 1962, follow herewith:

May 21:	9:00 A.M.	The Rev. James G. Jones
May 22:	9:00 A.M.	The Rev. Robert P. Taylor
May 23:	9:00 A.M.	The Rev. Gilbert F. Avery, III
May 24:	9:00 A.M.	The Rev. Myron Bloy
May 25:	9:00 A.M.	The Rev. John Crocker, Jr.
May 28:	9:00 A.M.	The Rev. James W. Evans
	1:00 P.M.	The Rev. John B. Morris
May 29:	9:00 A.M.	The Rev. Robert L. Pierson
	1:00 P.M.	The Rev. Geoffrey Simpson
May 30:	9:00 A.M.	The Rev. John Evans
	1:00 P.M.	The Rev. William Wendt
May 31:	9:00 A.M.	The Rev. Vernon Powell Woodward
	1:00 P.M.	The Rev. Merrill O. Young
June 1:	9:00 A.M.	The Rev. Quinland R. Gordon
	1:00 P.M.	The Rev. James P. Breeden

HERE ENDETH THE DAILY COMMUNIQUE RE JACKSON, MISSISSIPPI !!!



Carl Rachlin.

Morris
[illegible]

HOTEL HEIDELBERG
100% AIR CONDITIONED
JACKSON, MISSISSIPPI
THIS CONFIRMS YOUR REQUEST FOR

8:10 P.M
5/21/62

Day

Date

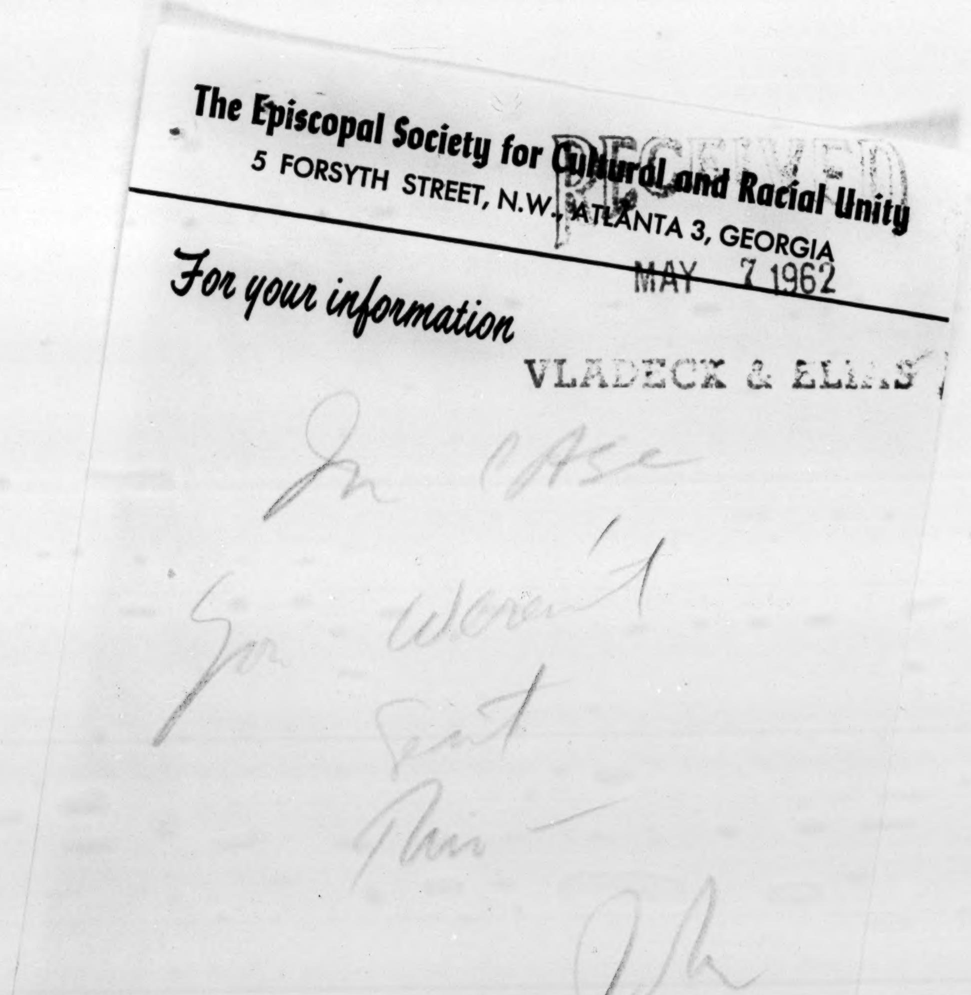
RESERVATIONS CANCELLED AT
7 P. M. UNLESS NOTIFIED

Requirements

CARL: I LEFT FOR NEW ORLEANS ON I.C 9:10 TRAIN. ENJOYED MEETING YOU AND TALKING WITH YOU. I SINCERELY HOPE THAT IF YOU GET TO CHICAGO YOU'LL CALL ME AT CBS AND WE CAN GET TOGETHER AGAIN. GOOD LUCK TO YOU IN ALL YOUR WORK.

YOUR FRIEND,
John Callaway

PLEASE PRESENT THIS CONFIRMATION TO ROOM CLERK UPON YOUR ARRIVAL



The Episcopal Society for Cultural and Racial Unity
5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA

RECEIVED
MAY 7 1962
VLADECK & ELIAS

For your information

In case
you weren't
sent
this —
John

THE REV. JOHN B. MORRIS
Executive Director

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
Room 200, 5 Forsyth Street, N.W.
Atlanta 3, Georgia

May 2, 1962

TO PILGRIMS, BOARD MEMBERS, AND LOCAL CHAIRMEN:

Events continue to demonstrate the inconsistency, instability, and undependability of Mississippi "justice". A call from Mr. Jack Young, one of the lawyers in Jackson, late on the afternoon of May 1, 1962 (Law Day or May Day, depending on your vantage point), indicates that all of the trials of the Pilgrim clergy have now been rescheduled. The period of time in which they will take place is now May 21 - June 1. Mr. Young says that he believes that there will be no further changes. Only time will tell as to whether this prophecy is correct.

JBM is presently out of town, but will communicate further with the Pilgrims when he returns on May 4. This memo is only to let you know the latest news, so that you can once again make new plans with the airlines, vestries, etc. He asks that you again notify him of your travel plans, the length of time that you will be in Jackson, etc.

The Revised, and Perhaps Standard, Version of the Trials in Hinds County Court, Jackson, Mississippi, May 21 - June 1, 1962, follow herewith:

May 21:	9:00 A.M.	The Rev. James G. Jones
May 22:	9:00 A.M.	The Rev. Robert P. Taylor
May 23:	9:00 A.M.	The Rev. Gilbert F. Avery, III
May 24:	9:00 A.M.	The Rev. Myron Bloy
May 25:	9:00 A.M.	The Rev. John Crocker, Jr.
May 28:	9:00 A.M.	The Rev. James W. Evans
	1:00 P.M.	The Rev. John B. Morris
May 29:	9:00 A.M.	The Rev. Robert L. Pierson
	1:00 P.M.	The Rev. Geoffrey Simpson
May 30:	9:00 A.M.	The Rev. John Evans
	1:00 P.M.	The Rev. William Wendt
May 31:	9:00 A.M.	The Rev. Vernon Powell Woodward
	1:00 P.M.	The Rev. Merrill O. Young
June 1:	9:00 A.M.	The Rev. Quinland R. Gordon
	1:00 P.M.	The Rev. James P. Breeden

HERE ENDETH THE DAILY COMMUNIQUE RE JACKSON, MISSISSIPPI !!!

N. A. A. C. P.
LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
10 Columbus Circle, New York 19, N. Y.
JUDSON 6-8397

RECEIVED
MAY 17 1962
VLADECK & ELIAS

May 16, 1962

Carl Rachlin, Esq.
280 Broadway
New York, New York

Re: Freedom Rider Cases

Dear Mr. Rachlin:

We are not certain as to whether copies of the attached material were enclosed with the letter sent you earlier today.

Yours very truly,

Leroy D. Clark

Leroy D. Clark

Enc.

N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
10 Columbus Circle, New York 19, N. Y.
JUDSON 6-8397

RECEIVED
MAY 17 1962
VLADECK & ELIAS

May 16, 1962

Carl Rachlin, Esq.
280 Broadway
New York, N. Y.

Re: Freedom Rider Cases

Dear Mr. Rachlin:

Enclosed you will find a Motion For Directed Verdict and Motion For New Trial used in cases tried since November 1961. The motion for General Demurrer has recently been drafted and has not been used in the previous cases. In some instances it is repetitive but directly attacks the affidavit and statute upon their face, which attack should be made prior to trial.

Included also is the form for Notice of Appeal and a set of Instructions to the jury.

Yours very truly,

Leroy D. Clark

LDC/gr
Encls.

Leroy D. Clark

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

FOR RELEASE IMMEDIATELY May 29, 1962

The following is a statement from an address to be delivered Tuesday evening, May 29th, at St. Paul's Episcopal Cathedral, Detroit, Michigan, before a meeting of the Michigan Chapter of the Episcopal Society for Cultural and Racial Unity:

"Announcement of the formation of the Gandhi Society for Human Rights, with Dr. Martin Luther King, Jr., foremost among its founders, culminates a gradually emerging divergence among religious forces operative in the civil rights movement. While in full agreement with its practical aims, such an organization must be critically considered by Christian leaders. It looms as a symbol of the departure from orthodox Christian tradition of key spokesmen who might otherwise have led in the renewal of the Church in areas connected with race. Although serving to remind us of our failure, it is tragic that a new creedal foundation is sought by those who could have found an even more adequate basis for militant and non-violent action in their own religious background. It is a new crucifixion when Gandhi displaces Christ as the source of power and motivation for those who call themselves Christian. Commitment to non-violence as a technique need not transpose itself into a cult where the concept itself becomes a "way of life". The Way of the Cross is sufficient encouragement to non-violence for Christians. The rise of this new creed from originally Christian roots judges the Church, as she must be judged, but should impel Christians all the more to seek the recovery of militancy on their own grounds, so that Christ might be understood as Lord of even the sit-in and the freedom-ride. We may rightly honor the example of Gandhi and his followers among us, but desist from turning our esteem into a new religion. The Christ of the over-turned tables and crown of thorns calls us to the same commitments and goals. A residual readiness to follow such a Christ might have led to a great awakening had Dr. King felt called in such directions. New prophets must come foreward now if Christ is not to be shunted aside in favor of humanistic loyalities which man elevates higher than faith."

- THE REV. JOHN B. MORRIS, EXECUTIVE DIRECTOR
THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY.

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
Room 200 5 Forsyth St.,N.W, Atlanta 3, Georgia

May 31, 1962

I. The following is a portion of an address by the Society's Executive Director on May 29th at St. Paul's Episcopal Cathedral, Detroit, before a meeting of the Michigan Chapter of the Episcopal Society for Cultural and Racial Unity:

"Announcement of the formation of the Gandhi Society for Human Rights, with Dr. Martin Luther King, Jr., foremost among its founders, culminates a gradually emerging divergence among religious forces operative in the civil rights movement. While in full agreement with its practical aims, such an organization must be critically considered by Christian leaders. It looms as a symbol of the departure from orthodox Christian tradition of key spokesmen who might otherwise have led in the renewal of the Church in areas connected with race. Although serving to remind us of our failure, it is tragic that a new creedal foundation is sought by those who could have found an even more adequate basis for militant and non-violent action in their own religious background. It is a new crucifixion when Gandhi displaces Christ as the source of power and motivation for those who call themselves Christian. Commitment to non-violence as a technique need not transpose itself into a cult where the concept itself becomes a "way of life". The Way of the Cross is sufficient encouragement to non-violence for Christians. The rise of this new creed from originally Christian roots judges the Church, as she must be judged, but should impel Christians all the more to seek the recovery of militancy on their own grounds, so that Christ might be understood as Lord of even the sit-in and the freedom-ride. We may rightly honor the example of Gandhi and his followers among us, but desist from turning our esteem into a new religion. The Christ of the overturned tables and crown of thorns calls us to the same commitments and goals. A residual readiness to follow such a Christ might have led to a great awakening had Dr. King felt called in such directions. New prophets must come forward now if Christ is not to be shunted aside in favor of humanistic loyalities which man elevates higher than faith."

****

II. Following are further comments on this subject. Going now to key Society personnel and all bishops, this sheet will be included in the next newsletter.

- No criticism is intended of Gandhi or the new Gandhi Society as such. The hand of God most certainly was on this man and we continue to be instructed by his example. Christians must honor him as they do other great men from different traditions. As stated, the issue is the primary source of inspiration for those who are Christians and present developments are considered to be part of a trend.
- The undersigned fully approves of the practical aims and methods set forth by the Gandhi Society, presently those of the Southern Christian Leadership Conference, and embodied in the leadership of Dr. Martin Luther King, Jr. It is a theological issue which is raised.
- While the question may seem only theoretical, it is believed that there are countless Churchmen from all racial groups who will understand and follow genuine Christian preaching and teaching vis-a-vis civil rights more readily than they will respond to Gandhi. Let the substance be Christ and Christian militancy in the advocacy of non-violent direct action, while great men whose example may inform us are recognized and to whom we look for methodology and encouragement.
- Also, let Christians re-read the New Testament for substance and example.
- And, finally, let the judgement of these currents which move with increasing vitality away from recognizable Christian Faith be discerned by the Church which largely refashions Christ into an inadequate Lord for such times as these. Let the Church do boldly what it says it believes - both within Her own life, as well as involved in the front lines of change in the community. If our poor stewardship of His Body suggests He is not at the front lines, it is certain He will find other channels for being there, whether they call Him Lord or not.

- JOHN B. MORRIS

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
Room 200 5 Forsyth Street, N. W. Atlanta 3, Ga.

June 4, 1962

To Directors, Pilgrims and Local Chairmen:

You have received the Report from Mississippi outlining the circumstances of the acquittal. We must now obtain from the authorities the initial bail of $7,500.00. I have talked with our Jackson attorney and he is looking into this. Hopefully this week we shall send a copy of the report to all donors to the Appeal Fund, inviting their comments on suggestions for the use of what eventually remains. In determining what amount this will be we shall be writing again to certain donors who gave over $50.00 reporting decisions on the application of funds and inviting their consideration. However this probably cannot be settled for several months.

A LEGAL SUIT

There is strong sentiment in favor of bringing suit against Jackson authorities for false arrest for at least one or two of the former defendents. As a step, however, in the clear consideration of everything that is involved we have asked Carl Rachlin and Bill Stringfellow in New York to prepare a memorandum on the pros and cons of such a move. This will be circulated and then we can have some basis for discussion. It appears that the chief reason is as an offensive move and not merely for the sake of seeking punitive damages. Indeed, only actual expenses might be sought. But, wait for the memorandum to come to MAKE a definite decision.

"THE PILGRIMAGE FUND"

Feedback from donors and discussion at the Annual Meeting should provide us a basis for decision making regarding the use of remaining funds. One possibility is to constitute the balance into a fund which will be permanent, but with initial and special allocations. The purposes for these special allocations with the most support are: defense of others still involved in the appeal of Freedom Rider cases, scholarship aid for Negro students at Sewanee, and a conference on the Church and Housing Segregation in the North. Also, it has been suggested that we might be of assistance in bringing the Liberian bishops to Columbia, S. C., for the House of Bishops in October, and we shall probably recognize with something the assistance of certain individuals in Jackson and the Negro college which was so helpful to us last fall. As for the permanent Pilgrimage Fund and its uses, initially constituted by any balance remaining after the special allocations and then open to additional donoations, it is proposed at present that such be available for any further efforts similiar to the Pilgrimage which may come up, some further effort at Sewanee if the Inn is not opened to all, and as a hardship fund where there is financial need through some stand taken by Churchmen.

SEWANEE

There was general agreement with the position previously reported, when we were in Jackson, that no return visit be made now in hopes that the policy might be changed quietly. However, if it is not completely opened on a non-racial basis by fall - November, for instance - new plans for a concerted effort will be made. If this is necessary, we might try having two persons fasting in the Sewanee chapel with replacements coming in instead of repeating the sit-in effort.

ANNUAL MEETING

Presently no pilgrims are registered, and only three Board members. Among others registered there are presently seven local groups represented by one or more registrants. I am especially concerned that we have good representation from the pilgrimage since it has been so crucial and suggest that we help with travel if this has been the barrier for not more than $50.00 after the initial $25.00 of travel expense. There will still be the usual registration, meals, etc. This would be for interpretation and spreading the witness of the Pilgrimage and, as such, could come from the Appeal Fund.

- JOHN B. MORRIS

John

[1962]

SECOND ANNUAL MEETING
OF THE
EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY

SCHEDULE

Thursday, June 21

2:00 P.M. - Registration, Lobby, Women's Residence Hall, 58 Street
and Woodlawn Avenue, Chicago
6:30 P.M. - Dinner, Cafeteria, Women's Residence Hall
8:00 P.M. - Evening Prayer, Bond Chapel, Preacher: Rev. James Jones,
Prayer Pilgrimage Participant
9:30 P.M. - Reception, Main Lounge, Ida Noyes Hall, 59th Street and
Woodlawn Avenue

Friday, June 22

7:30 A.M. - Holy Communion, Bond Chapel
8:15 A.M. - Breakfast, Cafeteria
9:30 A.M. - Opening Session with president's address, Cloister Room,
Ida Noyes Hall
10:30 A.M. - Coffee, Main Lounge, Ida Noyes Hall
11:00 A.M. - Major Address by The Venerable John Burgess, Arch-deacon
of Boston, Cloister Room, Ida Noyes Hall
12:30 P.M. - Luncheon, Cafeteria
2:00 P.M. - Symposium on the Church and the Nation; Cloister Room
Ida Noyes Hall
- Rev. Peter Powell - The Church and the American Indian
- Rev. Alfred Zodig - The Church and Anti-Semitism
- Mr. Edwin C. Berry - Race and the Cities of the North
- Dr. Melvin Kennedy - Changing Patterns in the South

4:00 P.M. - Coffee, Main Lounge, Ida Noyes Hall
4:30 P.M. - Executive Director's report, Cloister Room, Ida Noyes Hall
6:30 P.M. - Dinner, Cafeteria
8:00 P.M. - Major Address by Mr. Harry Golden, Mandel Hall,
University at 57 Street
9:30 P.M. - Reception for Mr. Golden, Main Lounge, Ida Noyes Hall

Saturday, June 23

7:30 A.M. - Holy Communion, Bond Chapel
8:15 A.M. - Breakfast, Cafeteria
9:15 A.M. - Business session incluj ing elections, Cloister Room Ida
Noyes Hall
10:30 A.M. - Coffee
11:00 A.M. - Panel on ESCRU chapters and their function, Opening remarks
by ESCRU president, John Lassoe, Cloister Room, Ida Noyes Hall
12:30 P.M. - Luncheon, Cafeteria
2:00 P.M. - Bus Tour of Chicago
4:00 P.M. - Evening prayer, Cathedral of St. James (at the conclusion
of the tour).
7:30 P.M. - Banquet, Hutchinson Commons, 57th and University.
Speaker: Honorable G. Mennen Williams, Assistant
Secretary of State for African Affairs.

Sunday, June 24

7:15 A.M. - Holy Communion, Bond Chapel
8:00 A.M. - Breakfast, Cafeteria
9:00 A.M. - Final Session, Cloister Room, Ida Noyes Hall
11:00 A.M. - Morning Prayer, Bond Chapel. Preacher: Rt. Rev. Chandler
Sterling, Bishop of Montana
12:30 A.M. - Luncheon, Cafeteria

Morris

RECEIVED
JUL 3 1962
VLADECK & ELIAS

ELLIS STRINGFELLOW & PATTON
COUNSELLORS AT LAW
41 EAST 42ND STREET
NEW YORK 17, N.Y.

TELEPHONE
TN 7-0180

WILLIAM S. ELLIS
WILLIAM STRINGFELLOW
FRANK PATTON, JR.

June 28th, 1962.

Mr. Carl Rachlin
280 Broadway
New York, New York

Dear Carl:

I have finally had a chance to check into the law respecting false arrest in Mississippi, and while I would like to spend some further time on this, I thought I would write you my preliminary findings.

(1) There is a one year statute of limitations on actions for malicious prosecution, false arrest or false imprisonment. (Sec. 732, Miss. Code).

(2) Actions against arresting officers for false arrest are specifically barred where persons in intrastate travel are arrested for failure to use segregated waiting rooms. (Sec. 2351.7, Miss. Code).

(3) In actions for false arrest or false imprisonment, the defendant is permitted to plead mitigating circumstances even though he has also pleased justification. (Sec. 1479, Miss.Code).

(4) There is a statute, as you doubtless know, specifically directing all officers of the executive department of the government of Mississippi to implement segregationist legislation. Executive personnel, according to the statute, includes police officers. Compliance with this statute by an arresting officer is denominated a full and complete defense to an action for false arrest.

My immediate queries are whether the latter defense would be admissible in a federal court in Mississippi. The statute has some language in it, incidentally, which directs executive personnel to "prohibit" action implementing the Supreme Court integration decisions. I haven't had a chance to check to see if there are any cases on this, though it seems to me a wholly astonishing statute.

Sincerely yours,

Bill

William Stringfellow

WS:sc
cc: The Rev. John Morris

July 17th, 1962

Mr. Paul [illegible]
[illegible] Travel Associates, Inc.
[illegible]
New York [illegible], N. Y.

Gentlemen:

Enclosed is our check to your order in the sum of $150.69 in full payment of your bill of $258.72 for travel arranged by you on May 18th, 1962.

Sincerely yours,

[illegible] & ELIAS

CR:mh
Enc.

BY: CARL RACHLIN

To [illegible]
check # 314
[illegible] 7/17/62

FEDERAL COURT
LITIGATION

GOVERNMENTAL
AND POLITICAL
LAW

WILLIAM L. HIGGS
ATTORNEY
~~707 N. CONGRESS~~
Box 4863
JACKSON 6~~2~~, MISSISSIPPI
~~FL 3-4155~~
355-4028

RECEIVED
JUL 19 1962
VLADECK & ELIAS

Carl Rachlin, Esq.
280 Broadway
New York 7, N.Y.

Dear Carl:

Since I received your letter while I was in the Army for my two weeks reserve training, I have been unable to answer it until now.

It seems to me that the best way of proceeding in an action of this sort is by way of the Federal civil rights acts and the federal courts. Monroe V. Pape, U. S. Supreme Court, 1961.

The last Mississippi statute mentioned by Bill Stringfellow has, as you know, been repeatedly declared unconstitutional by the three judge federal courts here in Mississippi.

If the suit firms up and if you supply me with the details, I shall be glad to work on it.

As I recall, CORE owes me a bill for $125. Also, I would appreciate very much receiving the money from the Episcopal Ministers' matter. I need it badly. Please help me out in this.

I trust you are well and doing fine.

Yours,

Bill

William L. Higgs

that they can make arrests with impunity regardless of what the higher courts have said in the past or may say in the future. Suits such as this should serve a useful purpose in that they may act a little less precipitately and a little more in accordance with the United States Constitution.

In our cases, the Court has found as a matter of law that there was no reasonable basis for arrest. Since this is so, an action such as I suggest herein might temper the ways of the police in making such arrests in other similar situations.

It is not necessary that an action be brought in the name of all of those arrested, since this is not a question of individual vindication or vengeance, but a few cases would be appropriate. Jones and Taylor having suffered most severely by the extensive period in jail (not unlike many of the Freedom Riders, who stayed in jail for similar or even longer periods of time) ought to be amongst the plaintiffs, though not necessarily both Jones and Taylor. A representative group of two or three others might similarly be plaintiffs against the various members of the police force in Mississippi. We might even include Judge Spencer as one of the defendants.

If this meets with your approval, I will work out a retainer with Bill Higgs and some arrangement giving him a fair percentage of the recovery. This would be, of course, in addition to any honorarium to which he is entitled by virtue of his assistance in the original acquittals in Jackson.

Sincerely yours,

CR:ew

CARL RACHLIN

cc: William Stringfellow, Esq.
William L. Higgs, Esq.

July [illegible]

Rev. John Morris
Episcopal Society for Cultural
  and Racial Unity
5 Forsyth Street, N. W.
Atlanta 3, Georgia

Dear John:

As you will recall, I thought the questions raised by Bill Stringfellow was so pertinent concerning the limitations that the statutes of Mississippi place upon suits for damages for false arrest, such as occurred in the case of you and your associates, that I requested an opinion from Bill Higgs of Jackson concerning this very matter.

On July 19, 1962, I received a letter from Bill Higgs, parts of which I will quote which I think bear directly on the questions raised by Bill Stringfellow recently. Bill Higgs says as follows:

> "It seems to me that the best way of proceeding in an action of this sort is by way of the Federal Civil Rights Acts and the federal case, Monroe v. Pape, U.S. Supreme Court, 1961.
>
> The last Mississippi statute mentioned by Bill Stringfellow has, as you know, been repeatedly declared unconstitutional by the three judge Federal Courts here in Mississippi."

In this very letter Bill Higgs is prepared to go ahead upon notice from us.

In light of all the factors, it is my view that it would be an appropriate course of action to institute [illegible] proceedings for the false arrest and the denial of civil rights. Whether we can recover in, or damages, a matter of some doubt, since we must deal with a Mississippian. On the other hand, I feel that we have a right to recovery and that this right should be adequately [illegible] and [illegible] [illegible].

Box 4863, Fondren Station
Jackson 6, Miss.
August 5, 1962

RECEIVED
AUG 7 1962
VLADECK & ELIAS

Hon. Carl Rachlin
Vladeck and Elias
280 Broadway
New YOrk 7, N. Y.

Dear Carl:

I will have no difficulty in proceeding immediately on the case, and I agree with you that we would probably be better off if we can avoid a jury. I also agree that we should at least ask for the sums that you mentioned plus all expenses that they have incurred. As you know this will be the first time that state or municipal law enforcement officers will have been called to answer for their actions in such a way. The very filing of the suit will have a great beneficial effect; however, I anticipate some personal repercussions as a result. This latter effect is unavoidable.

My fee will be as follows:

1. Filing fees and all other expenses that are necessary.
2. $1000 retainer.
3. $250 per day or fraction for trial, depositions, or appellate argument.
4. 15%of recovery.
5. $15 per hour for trial, deposition, or appellate argument preparation (i.e. all time spent after filing of the complaint).
6. Payment of $250 for the freedom rider matter that was dropped in the county court. I believe that this is less than half of what we had agreed that I would receive if the trials had been held and upon the assurance of which I cut my fellowship at Brandeis two weeks short in order to return to Mississippi.

The initial amount would include items (1.) (about $150), (2.), and (6.). I shall begin work immediately upon receiving this amount.

I trust you are well and doing fine. And I hope you get back down here soon. Much is happening.

Yours sincerely,

Bill

William L. Higgs

August 13, 1962

William Higgs, Esq.
Box 4063, Fondren Station
Jackson 6, Mississippi

Dear Bill;

Your letter of the 5th was received while I was out of town. There are certain things that are not clear about the letter. Obviously, all expenses of the litigation would be borne by the Episcopal Society for Cultural and Racial Unity (ESCRU).

With regard to the $1,000. retainer, I assume that it is your proposal that this sum would be worked off as set forth in items 3 and 5 of your letter, namely $250. per day for trial, depositions or argument and $15. per hour for preparation for trial, deposition or argument. This is not clear in your letter and I trust that you will clarify this for me. I would hope that you could see your way clear to cutting somewhat the $250. per day for time spent in trial, depositions or argument. So far as the 15% of recovery is concerned, I think that is reasonable and I am prepared to recommend it. May I suggest $150. per day for trial or argument in any appellate court and $100. a day for the taking of any depositions.

I think $15. per hour utilized in preparation as reasonable and I am likewise prepared to recommend that.

I look forward to seeing you soon. On clarifying our arrangements, I think it would be advisable if I perhaps come down to spend some time with you in the preparation of the complaint since time is of the essence as we both know.

With kindest personal regards,

Sincerely yours,

CR:cr

CARL RACHLIN

b/cc: Rev. John Morris

August 17, [illegible]

The Rev. John B. Morris
North Haven,
Maine

Dear John:

I enclose copies of letters from Bill Higgs to me and my response. I called Burke Marshall this morning and was advised that he would be out of town for the next couple of days. I saw no reason to speaking to one of his assistants for obviously this is a policy matter.

Please convey my best wishes to Patsy and the children.

Sincerely yours,

CR:cr
encs.

CARL RACHLIN

RECEIVED
AUG 29 1962
[illegible] & ELIAS

Box 4863, Fondren Station
Jackson 6, Mississippi
August 27, 1962

Carl Rachlin, Esq.
280 Broadway
New York 7, N. Y.

Dear Carl:

Pursuant to our telephone conversation of this morning, I agree to your suggestions as to the fee arrangements in your letter of August 13, 1962. As we also agreed, I am to receive the $1000 retainer and the $250 balance due prior to beginning work. We both appreciate that time is of the essence in this matter.

And I look forward to your being able to come down to help with the complaint.

I regret that I was unable to answer your letter more promptly.

Let me hear from you right away so that I can make my plans accordingly.

Yours sincerely,

Bill

William L. Higgs

Hi - Happy Labor Day John

Copy

RECEIVED
SEP 4 1962
VLADECK & ELIAS

August 31, 1962

Mr. William L. Higgs
Box 4863, Fondren Station
Jackson 6, Mississippi

Dear Bill:

Pursuant to our telephone conversations yesterday, enclosed is our check in the amount of $500.00 as partial payment for your services in undertaking to represent those of the arrested clergy who will bring suit against Jackson authorities. It is my understanding that the terms of our arrangement are covered in what you and Carl Rachlin agreed upon over the telephone following your letter of August 5th to him and his of August 13th to you. Carl will undoubtedly provide me with a copy of your letter subsequent to the agreement reached by the two of you on the telephone.

I reached Carl on the phone today and discussed the matter of our coming to Jackson to confer with you in preparation of the complaints. He is to call you and then call me back so that we can work this out for sometime next week.

On the matter you and I discussed of the plaintifs possibly appearing in Jackson in conjunction with the filing of the suit, Carl was to discuss this with you. He had reservations about such until after notice is xxxxxxxx served on those named in the complaint. Naturally, while I want to make as much as reasonably can be made over the instigation of the suit, I do not want to endanger our possibilities at all. I trust we can work out a satisfactory approach by telephone on plans for this.

We will want to have obtained the agreement of the plaintifs in terms of any substantitive material to which they will have to testify apart from the obvious facts known to all. As you indicated, it may be necessary to do this by Special Delivery letter and telephone if they do not come to Jackson to confer with us and then to be on hand for filing the suit. Perhaps we might plan a press conference in New York after papers are served, etc., to which you might come, along with plaintifs, in lieu of such in Jackson if we decide against it there. 9.

I am confident this is a right step we are taking and I am grateful for your interest in it and your readiness to be involved, notwithstanding such additional repercussions as it may have on you in your already out-on-the-limb situation.

Yours faithfully,

The Rev. John B. Morris
Executive Director

cc: Carl Rachlin

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 Forsyth St., N. W. Atlanta 3, Ga.

FOR RELEASE: TUESDAY, September 11, 1962:

Following are statements on the suit filed in Jackson by four Episcopal clergymen from several leaders of civil rights and religious groups:

I. STATEMENT OF LESLIE W. DUNBAR, EXECUTIVE DIRECTOR OF THE SOUTHERN REGIONAL COUNCIL:

"The legal action by the Episcopal ministers before federal court in Jackson may clarify an important area of civil liberties. Can the police power of a municipality be used to frustrate peaceful protest by a minority against discrimination, or are the police obligated to protect the right and freedom of peaceful protest? The decision of the case can have wide effect wherever there are troubled race relations."

II. STATEMENT OF THE REV. WYATT T. WALKER, EXECUTIVE ASSISTANT TO DR. MARTIN LUTHER KING, JR.:

"This is a most significant step for it brings directly under the scrutiny of the Federal Courts these specious arrests that are aimed at perpetuating segregation. We are gratified that our brethren of the clergy are charting the way for still another creative attack on the entire evil system."

III. STATEMENT OF RAYMOND M. HILLIARD, CHAIRMAN, NATIONAL CATHOLIC CONFERENCE FOR INTERRACIAL JUSTICE:

"The suit for damages filed by an interracial group of Episcopal clergymen who were falsely arrested and convicted in Jackson, Mississippi, is a responsible and desired action. It emphasizes clearly the rampant violations of individual civil rights perpetrated on behalf of evil racial segregation. We hope the suit will encourage the use of police powers to protect the rights of all citizens."

IV. STATEMENT OF JAMES FARMER, NATIONAL DIRECTOR, CONGRESS OF RACIAL EQUALITY:

"I applaud this civil action by the Episcopal clergymen against the police authorities of Jackson, Mississippi, charging false arrest. Unlawfully arrested by irresponsible police action, the ministers were acquitted. Hundreds of other Freedom Riders, similiarly arrested, have been convicted. The clergymen's suit is thus of great significance. It may serve as a deterrent to the arbitrary police power now being used in many Southern cities to maintain illegal segregation."

File Morris v. ~~[illegible]~~ Mississippi [1962]

Maston v. State, 83 Miss 647, 36 So 70 (1904)
Truly, J.

1. Δ charged with homicide
2. Trial judge refused evid of Δ character

Held: reversed on this and other grounds.

Reasoning: 1. "The general rule as to the admissibility of testimony to show the general reputation of the Δ is that such testimony is always admissible, the only limitation being that it must be confined to the particular trait involved in the nature of the charge against the Δ."

citing Westbrooks v. State, 76 Miss. 713, 25 So 491; 1 Greenleaf on Evid. §64; 1 Wharton, Am. Crim. Law, §636.

2. & citing Campbell, J. in Coleman v. State, 59 Miss. 490:

"The instruction before us declares that evidence of good character is insufficient to raise a reasonable doubt, when excluding such evidence, the case otherwise made out against the accused, and is objectionable as being on the weight of certain evidence. We

36 80 70

do not approve this view of the law with respect to evidence of the good character of the accused. 'A good name is rather to be chosen than great riches,' and in no other emergency of one's life may it or should it prove to be such a tower of strength and such an effective shield as when he is charged with crime. Evidence of the good character of the accused should go to the jury as any other fact, and its influence in the determination of the case should be left to the jury w/o any intimation from the ct. of its value. The ct. should ~~not~~ not tell the jury that satisfactory evidence of the good character of the accused is or is not sufficient to raise a reasonable doubt of his guilt. The jury is to have this evidence as an aid to estimate the other evidence, and by the light of the whole to reach a verdict. There may be many cases where proof of good character would turn the scales in favor of the accused, and the just value of such evidence should not be depreciated by any an instruction limiting its efficiency in any case."

"Wigmore on Evidence" 3rd ed. 1940

§5 - Δ in Criminal Case; Character as evidentiary of an Act; Δ's Good Character always admissible in his favor.

{§55 - " a Δ's character, then, as indicating the probability of his doing or not doing the act charged, is essentially relevant."}

§55 "Character being thus relevant, it follows that a Δ may offer his good character to evidence the improbability of his doing the act charged, unless there is some collateral reason for exclusion; and the law recognizes none such...

"(1) It was once thought that character could be invoked in capital cases only:...

"But it is now well understood to be admissible upon charges of all grades, even of mere misdemeanors."

citing: Maston v. State

59 So 2d 335
^ 36 So 70

Loughlin v State, 59 So 2d 335 (1952)

The Ct. is not required to instruct the jury that satisfactory evidence of good character of accused is or is not sufficient to raise a reasonable doubt of his guilt.

{This does not change the rule as to the admissibility of such evidence}

9/15/61 – Jackson, Miss

Cap'n Ray

Sept ~~12~~ 13 about 11:40 A.M.

Ordered them to move on

more than 1 present

inside Trailways
Bus Terminal

He arrived at Terminal

Ordered them to move on

refused

Had advance notice

any
~~a~~ citizen spoke to him

others milling around c

ugly mood
Crowd in ugly mood

New Orleans Monday 9/11
left Tuesday 8:30 9/12
then St Martins School, Metarie
La - conf with Headmaster
Later that day at noon -
Church of Mediator McComb,
Miss

(always morning & evening
prayers)
Then Vicksburg - All Sts
Jr College (Rectr) - discussing
church problems - then to
Tougaloo College ~~then to Tougaloo~~
Supposed to go Sewanee
as next stop - Univ of South,
advised not to go to Birmingham

Wed at 6:30 - Holy Communion
at 7:00 - Bkfast at 7:30. -
tickets purchases ~~at 11:~~ just
before 11:00 at Trailways
terminal bfr in
coach for Chattanooga
Came from New Orleans
to Jackson - by Chartered Greyhound
bus

~~Started out~~ arrived
at terminal 11:35 AM - just at

12:01 — planned to get a sandwich — didn't know where the first stop after Jackson

arrived in 3 taxis ~~to the~~ stopped

walked in main waiting room

about 15 people in waiting room — no one said anything, no gestures

police officer "Shall we take them now or later"

1st 5 Breeden (Avery, Thomas (?) Young, Gricker Simpson, John Evans stopped by Cop (the "Stop right there"

People who entered called back — the other officer came up, told 1st officer to tell them to come out

all came out of restaurant -
quietly, etc.

John Dennis came out -
we're not breaking any
laws, there's no sign of health
we are interstate travelers, we
have our tickets. We are
hungry.

Cop said you will have
to move along

John Dennis said we
will be glad to get our bus
after we get something to eat.

Cop said "You have to
move along" - apparent
gesturing to stay out of lunch
room

Never said to get out of
rest room

~~other cop~~ "Do you refuse to obey
my order?"

~~Never~~ Several people
commented as above.

He asked if they all under-
stand my order to move on -
they

You are all under arrest

Morris [illegible] the charge —
Of a Breach of Peace —

No sign of violence or
Officer say you wait here —
because Officer kept in telephone
call

At this point — [illegible]
Kennedy started [illegible],
fracas — very quietly
[UPI] [illegible] & Cracker

~~then " Direct us to Ford~~
Three elderly ladies coming
down stairs stopped until
the end of the fracas
Police man [illegible]
the fracas officer that he
said to let ladies thru

then" Direct us to Ford
Also start

Cap n Clay appeared almost
immediately
No [illegible] entered the
terminal
attention to them no one paying

Cap'n Ray entered from the Bus side of terminal

"If you gentlemen will just move along we will see that you get on your bus"

Harris — We are hungry we just want some lunch — We are going to Chattanooga by way of Memphis

Ray reiterated plea to move along

Ray then ordered them to move on — Do you understand my order?

(didn't say "out"

Ray — You haven't heard the comments I heard coming in here.

(How could Ray have heard the comments

Ray came straight in the door

Ray "You don't know the feeling down here"

Ray Do you refuse to obey"

One said "I refuse to obey, I'm

Hungry

Ray arrived at 11:40 -

(How can they have moved along, they were already under arrest)

All followed Ray

After they went out back - Ray said see that crowd that you have riled up..

In fact they were fueled up to go on a bus

CORE
Miss v Morris

Conference 12/7/61

1. Should various agencies, ie:- NAACP & Civil Liberties Union, etc. join in for propaganda purposes & for the defense of the trial & for research?

Want Carl to be the chief & Ernst H Rosenberger to work with him & any others recommended. If wants a letter, will be sent.

2. Question raised whether Core's funds should be used at all in this, ie:- legal fees, expenses

3. If any question or advantageous thought arises in the mind of any of the Clergymen he will take up with Carl for his consideration rather than act on it himself. In this way there will be a unity of action & not each one going off on his own tangent.

4. Are you going to meet only the issues or are you going to question jury empaneling, etc.?

5. Shouldn't there be character witnesses such as each man's Bishop? I think it's a good idea if can be done legally.

6. Do you want them all down at one time?

7. Do you think the Clergymen should bring individual suits with their own attorneys against Trailways for damages?

8. Advised that all of them invited to dinner at Carl's house Saturday night.

Merrill Young ESCRU

Robert T. Fortna "

John B Morris "

The Rev Arthur Walmsley, Episcopal Church National Council

William Stringfellow 41 E 42 NY 17 NY

Ann Thacher Anderson, ESCRU + SCAD

John Crocker Jr. - ESCRU.

William Scott Ellis; 41 E. 42nd St., N.Y. 17, N.Y.

Marvin Rich —

SHE —

Rev Vernon Powell Woodward —

Rev. Robert Chapman —

Gordon Carey

[1962]

Albert Holland
Casualty Bond
High School
Miss State Univ
Jan 49

Martin
City of Jackson
Sanitation Truck driver
3 yrs

Avery P. Haynes
Retail Credit Ins. Empl
Univ of Miss
'51

Paul Dudley Walker
Gulf Oil
Analyze leases contracts

Howard A. ~~Wells~~ C. D. Howorth
Miss State ~~employee~~ Real Estate

Mullens
Westbrook Manufacturing

Allen
Sales Mgr
Weiss for flint
Hilltops - 1947

F.A. ~~Fulsham~~
~~Auto Mechanic~~

G.J. Reese
operating parking lot

Pratt
Vacuum Cleaners

Henry ~~G. Ahl~~
~~Tabul~~
~~unemploy~~
~~security~~
15 yrs

Gail Reynolds
Printing Pressman

Commission

Beckham
G. E. Electric
Glass

Charles ~~Snyder~~
~~City~~ ~~Machine~~
~~City~~ ~~Maintenance~~

C. W. Sullivan
Cal Dept of Agri
State Dist
Supervisor

Jury exam Voir Dire

p were 37 being Def

while congregating

in a public place

conditions such that a breach

of the peace may have been

occasioned thereby

refused tt a police officer

J O Martin
M Fico

M L Robertson

Henry E Little

Avery P Harris

Hall Dudley
Walke

F G Beckham

Albert E Knowland

A Clode J

Howard A Wells

Robert O Mullins

C J Reese

J.H. Balls

~~John E Griffin~~

C. W. Sullivan

Cecil C Ruffles

Wa

on or about Sept 13, 1961
deft - unlawfully
breach of the peace may
have been occasioned thereby

motion to desegregate courtroom

motion re jury trial

Jones

~~tt~~ State Police
Criminal Investigation
experienced breaking up of riots

~~have been~~ in

heard police say
"shall we get them now etc"

police stopped them from going into lunch room - about 5 entered - called them out

People in station?
Quiet
going about business

Roy

– entered the station

rear

went to back entrance

directly to the men

conversation

how man were there

– 12 white – 3 negro

violence

language

threats

patrons part?

ministers part?

~~Did~~ other than refusal to leave an
did ministers ~~comm~~ do any act
that was disorderly

Did ~~they to~~ these fifteen including
deft Father Jones have a right to
be where they were

Didn't he offer to take them to
their busses

Did he speak to the other officers

do you think citizens of Jackson

other police

why didn't they take them away
right then + there

T ~~Davis~~

Nichols —

Police dept
patrolman 4 yrs.

Continental ~~Bus~~ Trailways
Sept 13, 1961 - 11:37 AM.
11:00 - Griffith

Placed Jones under arrest
14 others with him

3 cabs in station
entered front door of
terminal

20-25 people in
others following them around
Ordered them depart / fails
- couldn't move on

Griffith said they were
under arrest

Thought there would
be a breach of peace

SEDFRE

MORRIS, BEVERLY VS. NEW YORK

Box 39
Folder 16

State Historical Society Of Wisconsin

Please Retain Original Order

STREET PAINTERS

stencil
25 copies

Benny Harris

~~Arthur Harris~~

issued Summons #
returnable 7-27-64

date & trial
part 7-A Aug. 26
(52 Chambers St.)
DOCKET #

MORRIS
Summons #
L 765887

Docket #. 20289

phone # (work):
620-4285

HARRIS

Street Painters

~~9A~~ 9-14

People v. Beverly Morris
Summons #: L 765887

date = Aug 26
pt 7A - 52 Chambers St.

Docket #: 20289
Complainant: Officer Zaccario(sp?)

charge: violation of § 662 F-3.0 Adm. Code in that:
"(def) did paint a 123rd St and 2nd Ave without authoriztn"

1. exhaustive research has not found any section 662 F-3.0

2. the police leagal bureau suggested that the charge should probably be § 692 F-3.0 ..... Pat Healey, atty for the bureau has assured me personally that there is no such section as 662 F-3.0.....He also statesthat the complaint should specify that, if §§ 692 F-3.0 is to be used, ~~that it should also state~~ it is a renumbering of old section 82 D7-1.0 Adm Code-

3. the complaint as amended will still not spell out a cause of action against defendant. It reads:

> "It shall be unlawful for any person to paste, paint, print or nail any handbill, poster, notice, sign, or advertisement upon any curb, gutter, flagstone, tree, lamppost, awning post, telegraph pole, barrel, box or hydrant in any street."

The plain import of this section is directed towards (painting) miscellaneous accoutrements on the street, not the street itself. The doctrine of "Expressio Unius . . ." leaves no doubt that the street itself is without the comprehension of this section. That doctrine becomes more of a mandate the more detailed the section involved reads; and this section is not only detailed, but quite long, thus destroying any suggestion that it still might be read generally

Also, another canon states that we must follow the order in which the items are specifically listed, and may not, even in a general coverall phrase (which this section specifically lacks) retread and infer the inclusion of a word or phrase not listed, but must, on the other hand, only infer those subjects which might reasonably be read into the general phrase in the direction which the specifics point.

In the above section, the closest we come to streets themselves is the opening words, curb, gutter; there is no doubt that defendants' conduct may not be read into these words, and thereafter, the section moves into particular objects on the street .
no matter which way you cut it, the section doesn't apply

Arthur Harms - also given summons - paid $2 - fine

4. Furtermore, the conplaint shall not spell out a cause of action against the defendant in that the defendant did not, in fact, even paint any of the "miscellaneous accoutrements" listed in the section, /on or in the street7.

The section specifically mentions those items which it forbids to be "painted" on or in the street. It is clear, from even a casual reading of the section, that it was meant to proscribe the unauthorized use of the city's streets for the purposes of communicating, etc., with the public. Each word individually, and most conclusively when taken together, implicitly/explicitly involves the idea of speech. Of course, the defendant in no way

oh, hell, she was painting a part of a stop sign....

if, in fact the cop testifies to this. If, however, he merely charges her with simply painting, then, of course , (?) this argument would apply Good luck, cop!

Even if the People have in fact proved conclusively that the defendant did violate this section 662 F-3.0, the fact remains uncontroverted, that the legislature (or whoever makes these things up) has not seen fit to make such "violation" an offense.

Monday –

call → conflict w/
P. Jayjen
call Mont 7.?
–6

Ben Morris

no bids

school boycott
∴ must go + cannot
come to court

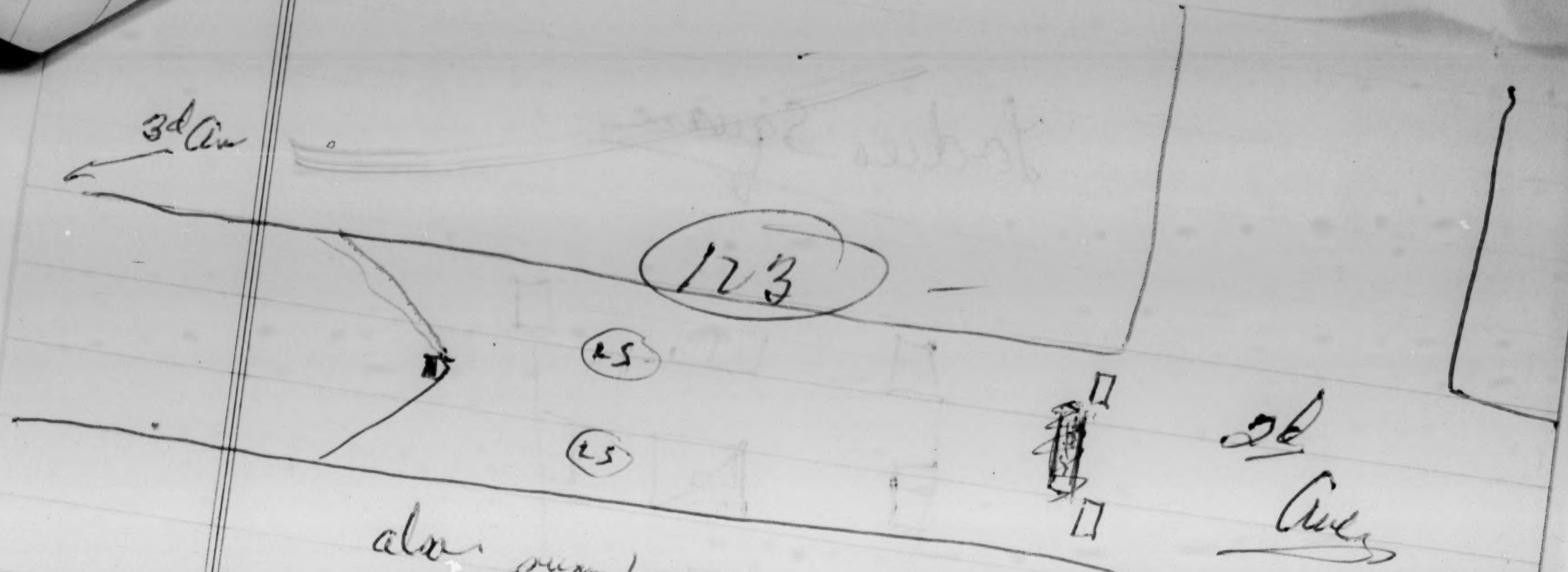
the church

PAL promised "next summer" the st to be
fixed up + painted.

Pct: 126 Lex & 3rd or Park

intent = may bring in hearsay the show
lack of intent to violate
the law.

✓ the conversations w/ the police
✓ the PAL promise re the church
✓ the children playing in the st
+ traffic therein –
✓ the child hit by a car.



also sunglasses
hop-scotch

cop named + 23 cops — 2 sqd cars — complaint arising
cops came Hand talked w/ Charlie Sanders
< 5 minutes

(M = about ~~[illegible]~~ joint st is very sign w/ "do not enter schoolchildren"
legally ~~sign~~ just st when right " ")

A Harris then given a S. (diff. cop) -
1. age
cop = v. have I.D.?
1. agree — in office
(lots of kids -. But signs on rope strung across st "am playst — no thru traffic"
M + CS still talking -
& keeping kids inside w/ rope & cop insisted
cop = where's ur I.D.
Sc at office (122d St)
walked down st - kids around
& cop followed
came back & issued a S.

no other tickets

painting going on at time

Mar '64 make play area → set in

trying to get PAL - to mow & paint st
[area plta]

Ramsay

Mike Kinsler spoke to PAL
mix around
told no plta ∴ PAL wouldn't paint

Doane Kachvane - church sexton
spoke to Mavil about enforcing the st
" promised OK - a cop
in evening to give tix of
cars entering contrary to sign
never enforced

23rd prct

I was there @ 12 times
never saw a cop there

saw cop car in eve &
told kids to get off the st
(after 6:00)

kids had been hit by car
Rebecca ?'

church teen age project fixing the church
4 kids made patrols of D.K.
& never paid
I talked to D.K. & ~~[illegible]~~ ~~told~~ of the patrol but
never saw them again

Still not being enforced

kids normally came in office

1 - 20 kids
1-2-3 counselors

A, Charles Reese ball team?
L, most of the work
rather give help
twice a week of A&Crafts

set up care office in 122 st —

kids curious — & came in —
gave them crayons paper —
then
worked in arts & crafts class
2 a wk
trips throughout summer —

U. Cent Pk	Bx Zoo
W's Fair	Planet
Mus Nat Hist	Cent Pk
Yankee Stadium	

— ball team for 123d st boys 9-11
won any games? yes —

remedial reading & tutoring service

trying to get space in the church & A&C, tutoring, & reading

tutoring at office @ 100 bks
get bks for friends in publishing business

traffic — kids cldn't play freely
in the playstreets

why do all this

dangerous age.
cld get into real trouble
unless they're given real help

overcharged in [illegible] life when u're a

u can't just sit around

[illegible] human being it [illegible] always impossible idea "O"

ask judge if he'd like
2 help run a program
for kids

P/Y
Caly
[illegible]

a/c Bankura

Case finally dismissed for want of prosecution
(J. Rao)

Cr 3 1739

Stipulate = play area

J. ~~[illegible]~~ Vincent P. Rao —

have you ever known ʟ st to be enforced?

Do you know ʟ area? / very many children?
" " play in ʟ st.?
normal traffic?

Did U or did U not hear Capt. Marsh say z play area?

Did U know that a child was recently hit by a car on that blk?

How many people were painting? [where, in relation z ʟ curb, did ʟ Δ paint?] VIP

" " police " present?

Did U hear Capt. Marsh speaking to any of them

avoid mention of what they were painting [sign]
unless he say so or denies —

did you see ʟ Δ paint a handbill
poster
notice
(sign)
advertisement

did you see ʟ Δ paint specifically on a curb
a gutter
a flagstone
a tree
a lamppost
an awning post
a telegraph pole
a barrel
a box
a hydrant

~~tells~~ rejs no citation of auth. z maintain the well est'd principle at ʟ commencement of ʟ trial, a motion to amend ʟ complaint comes too late

a Δ has a constit right z be apprised of ʟ charge made vs her ~ especially in view of ʟ highly comply nature of ʟ ~~se~~ set of codes under which she is charged. → An attorney's task is to defend vs ʟ complaint as registered ~ not z do exhaustive research to guard vs. ʟ possibility of ʟ prosecution committing error & double error at that

call office
to Pres meetings

member of a group —

office — opened when?

describe nature of activities

did U notice a sign 123 + 2nd Av?

what stated?   did U see cars nevertheless use st?

~~was c sign up on c day in Question?~~ ever see a cop enforce c ban?

Doane Cochran = sister

Marcel promised to put a cop there + enforce it?

did Doane tell you that c PAL promised to fix c st by next Summer?

A = how many times have you been specifically on that block? (12?)

ever see it patrolled? - ever?

+ often did you see a police squad car order c children off of c street?

c church = have Summer Program

employ teen-agers —

did U know this " " ?

" ~~c~~ of church physically patrol the st + keep cars away?

Mss CEDFRE.

Historical Society of Wisconsin

Mosby, James Jr. vs. Louisiana Board of Education

Box 39
Folder 17

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File

April 14

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

JAMES MOSBY, JR., a minor, by his next friend, MRS. ETHEL L. MOSBY	:	
and	:	
D'ARMY BAILEY, a minor by his next friend, WALTER LEE BAILEY	:	CIVIL ACTION
Plaintiffs,		FILE NO. ________
VS.	:	COMPLAINT
LOUISIANA STATE BOARD OF EDUCATION, SOUTHERN UNIVERSITY and A and M COLLEGE, and FELTON G. CLARK, individually and as President of SOUTHERN UNIVERSITY and A and M College.		
Defendants.	:	

* *

I.

A. The jurisdiction of this Court is invoked under Title 28 United States Code, Section 1331, as this action arises under the Fourteenth Amendment to the Constitution of the United States, Section 1, and Title 42, United States Code, Section 1981. The matter is controversy, exclusive of interest and costs, exceeds the sum or value of Ten Thousand Dollars ($10,000.00).

B. The jurisdiction of this Court is further invoked under Title 28, United States Code, Section 1343, in that:

> This action is authorized by Title 42, United States Code, Section 1981, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Fourteenth Amendment, Section 1, of the Constitution of the United States and secured by Title 42 United States Code, Section 1983, providing for the equal rights of citizens and of all persons within the jurisdiction of the United States.
>
> This action is also authorized by Title 42, United States Code, Section 1981, to be commenced by any citizen of the United States or other persons within the jurisdiction thereof to redress the deprivation, under color of state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by Section 1 of the Fourteenth Amendment of the Constitution of the United States.

II.

This is an action for preliminary and permanent injunctions to restrain defendants, the Louisiana State Board of Education and the Southern University and A and M College and their agents, representatives, employees, assigns and successors from obstructing, hindering and otherwise interfering with the right of the plaintiffs to attend the Southern University and A and M College in Baton Rouge, Louisiana without expulsion, being placed on probation or otherwise disciplined for plaintiffs peaceful demonstrations and other lawful protests against racial segregation and discrimination and because plaintiffs exercised their constitutional rights of freedom of speech and of assembly.

III.

All plaintiffs are citizens of the United States, and were students at the Southern University and A and M College, Baton Rouge, Louisiana until they were refused permission to register for the second semester and were expelled from the school. At the time of expulsion, plaintiffs were students in good standing and, but for said expulsion, they would still be students in good standing at defendant, Southern University and A and M College.

IV.

Defendant LOUISIANA STATE BOARD OF EDUCATION, was created and exists under the laws of the State of Louisiana for the purpose of exercising general control and supervision, inter alia, defendant, Southern University and A and M College, a state operated land grant institution of higher education for Negroes located in Baton Rouge, Louisiana. Defendant FELTON G. CLARK is the President of Southern University and is appointed by and is subject to the jurisdiction and authority of the said STATE BOARD OF EDUCATION and in consequence thereof administers the affairs of the aforesaid University on behalf of said BOARD OF EDUCATION.

V.

(a) On December 13, 1961, approximately forty-five students of Southern University and A and M College, among whom was plaintiff, JAMES MOSBY staged peaceful demonstrations against lunch counter segregation based upon race, and job discrimination based upon race in local stores in the City of Baton Rouge, and were arrested by the police of said City of Baton Rouge, warned that what they were doing was illegal, and thereafter released from custody, despite the fact that such peaceful activities are and were at all such times protected by the Constitution and Laws of the United States.

(b) On December 14, 1961, approximately twenty-two students of Southern University, among whom was plaintiff, JAMES MOSBY continued to engage in peaceful demonstrations against racial discrimination and segregation in the City of Baton Rouge, These said students including plaintiff, JAMES MOSBY were nevertheless arrested and detained by the Police of the City of Baton Rouge.

(c) On December 15, 1961, approximately 2,000 students of Southern University among whom was your plaintiff, D'ARMY BAILEY participated in another peaceful demonstration protesting segregation based upon race and further protesting the arrests made for the aforesaid peaceful demonstrations, as described above.

Upon Information and Belief,

(d) On or about December 16, 1961, THE LOUISIANA STATE BOARD OF EDUCATION which administers Southern University ordered the automatic expulsion from schools under its jurisdiction of any student arrested and/or placed in jail in connection with such demonstrations as described above and further banned student participation in demonstrations. That said order was designed to inhibit said students, amongst whom were plaintiffs, from exercising the rights guaranteed to them by the United States Constitution and the laws thereunder.

(e) On or about December 16, 1961 in pursuance of the aforesaid policy, DR. E. C. HARRISON, Dean of Instructions at Southern University and subordinate to the authority and jurisdiction of defendant, FELTON G. CLARK, closed the University several days prior to the normal Christmas Recess; that upon information and belief this said action was taken as part of a course of conduct designed to intimidate and inhibit the students at the aforesaid Southern University amongst whom were the plaintiff herein, from exercising the rights guaranteed to them by the United States Constitution and the laws thereunder.

(f) That in pursuance of the same course of conduct described above and in violation of the normal prodedure followed at said University and for the purpose of intimidating the students of said university including plaintiffs, defendant FELTON G. CLARK on or about January 18, 1962 closed the said University and demanded that all students including plaintiffs herein leave the premised of the University.

(g) That on or about January 18, 1962, in pursuance of the aforesaid policy of the State Board of Education, plaintiffs, D'ARMY BAILEY and JAMES MOSBY, JR., were informed by ULYSSES S. JONES, Dean of Men, at Southern University and a subordinate of and subject to the authority of defendant, FELTON G. CLARK, that said plaintiffs would not be granted permission to register at Southern University for the Spring Semester of 1962, or even remain on the campus of said Southern University after 6:00 P.M. Thursday, January 18, 1962.

VI.

That said acts described in (g) above constituted an illegal expulsion from said University by the defendant herein and that said illegal expulsions were in violations of the rights of plaintiffs herein as guaranteed under the First Amendment to the United States Constitution and protected against improper state action by the Fourteenth Amendment to the United States Constitution and that said acts described in (g) abovewere taken without any semblance of due process of law, and without any hearing or notice to said plaintiffs.

VII.

Expulsion from and refusal of readmission to Southern University came without warning, notice of charges, opportunity to offer testimony in defense, cross-examination of accusers, appeal, or other opportunity to defend plaintiffs' rights not to be arbitrarily expelled from defendant-University. Defendants' expulsion order, and orders refusing readmission, issued by the defendants functioning under the statutes, laws and regulations of the State of Louisiana, thereby deprived plaintiffs of rights protected by the due process clause of the Fourteenth Amendment to the United States Constitution.

VIII.

Plaintiffs have suffered and are threatened with serious and irreparable harm and injury by reason of the actions of defendants complained of herein. They have no plain, adequate or complete remedy to redress these wrongs other than this suit for an injunction. Any other remedy, if such were available, would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury, and occasion damage, vexation and incovenience, not only to plaintiffs, but also to defendants as governmental agencies.

WHEREFORE, Plaintiffs pray for preliminary and permanedt injunctions forever restraining defendants from refusing to permit plaintiffs to seek readmission and to re-register as students at the aforesaid Southern University, and from interfering with the plaintiffs' rights to remain at the defendant SOUTHERN UNIVERSITY and A and M College and complete their education at said college under rules and regulations no different from those applied to other college students smimilarly situated. Plaintiffs pray further that defendants be forever enjoined from interfering with attempts by the plaintiffs to seek rights guaranteed by the Constitution of the United States.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
Attorneys for Plaintiffs

BY__________________________

MURPHY BELL
971 S. 13th Street
Baton Rouge, Louisiana

OF COUNSEL

CARL RACHLIN, ESQ.
280 Broadway
New York, New York

OF COUNSEL

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

JAMES MOSBY, JR., a minor, by his :
next friend, MRS. ETHEL L. MOSBY

and

D'ARMY BAILEY, a minor by his :
next friend, WALTER LEE BAILEY

Plaintiffs,

CIVIL ACTION

FILE NO. ________

ORDER

VS.

LOUISIANA STATE BOARD OF EDUCATION,
SOUTHERN UNIVERSITY and A and M
COLLEGE, and FELTON G. CLARK, individually and as President of SOUTHERN
UNIVERSITY and A and M COLLEGE. :

Defendants.

* *

The above-captioned cause having been presented to this Court on this date and it having been made known to the Court that Plaintiffs, upon their complain and upon certain testimony to be offered, seek to have this Court issue an injunction restraining defendants from interfering with plaintiffs' rights to remain at Southern University and A and M College as students, it is Ordered that this cause be and the same is hereby set for a hearing at 10:00 a.m., on ________ day of ______________, 1962, at which time the parties will present evidence in support of and in opposition to said motion.

Done, this the ______ day of ____________, 1962.

____
UNITED STATES DISTRICT JUDGE.

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

JAMES MOSBY, JR., a minor, by his
next friend, MRS. ETHEL L. MOSBY

AND

D'ARMY BAILEY, a minor by his
next friend, WALTER LEE BAILEY

Plaintiffs,

VS.

LOUISIANA STATE BOARD OF EDUCATION,
SOUTHERN UNIVERSITY and A and M
COLLEGE, and FELTON G. CLARK, individually and as President of SOUTHERN
UNIVERSITY and A and M COLLEGE.

Defendants.

CIVIL ACTION

FILE NO. ____________

MOTION FOR PRELIMINARY
INJUNCTION

****

Upon the complaint herein and the testimony of witnesses to be presented at a hearing to be held on this Motion for Preliminary Injunction, and such other evidence as may be presented, plaintiffs move the Court for a preliminary injunction as prayed for in the said complaint on the grounds therein set forth and

1. On the grounds that unless restrained by this Court defendants will continue to perform the acts referred to; and
2. Such action by the defendants will result in irreparable injury, loss, and damage to the plaintiffs as more particularly appears in the complaint; and
3. The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to the defendants but will prevent irreparable injury to plaintiffs. If said cause is not heard and relief not granted on this Motion for Preliminary Injunction prior to the opening of the Summer Session of Southern University and A and M College on about June 10, 1962, this Court in the normal course of procedure will not dispose of the cause on that portion of the complaint praying for a permanent injunction until a date so late that summer classes at Southern University and A and M College will have begun.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

BY______________________
ATTORNEY FOR PLAINTIFFS.
2211 Dryades Street
New Orleans 13, Louisiana

CARL RACHLIN, ESQ.
280 Broadway
New York, New York

MURPHY BELL
971 S. 13th Street
Baton Rouge, Louisiana

SEDFRE

MYERS, REGINA et al. VS. BOARD of EDUCATION NEW YORK 1965-1966
(SCHOOL CASE)

Box 39
Folder 18

State Historical Society Of Wisconsin

Please Retain Original Order

Draft #2
City of New York School Complaint
12/29/65

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REGINA MYERS, JAMES MYERS, minors,
by Mrs. Ruth Myers, their mother
and next friend;

DARRELL BETHEA, a minor, by Mrs.
Frances Bethea, his mother and
next friend;

ROSALYN GALLOWAY, a minor, by
Mrs. Ella Galloway, her mother
and next friend;

PAMELA GIST, a minor, by Mrs.
Rachel Gist, her mother and
next friend;

CALVIN CARRINGTON, and LEON CARRINGTON,
minors, by Mrs. Ivy Carrington, their
mother and next friend;

JAMES MABRY and KAREN MABRY, minors,
by Mrs. Elizabeth Mabry, their
mother and next friend;

JACKIE POPE, SHARON POPE,
ROBERT POPE, and TAMMY POPE,
minors, by Mrs. Marie Pope,
their mother and next friend;

LARRY THOMPSON, JERRY THOMPSON,
and WILLIAM THOMPSON, minors,
by Mrs. Lela Thompson, their
mother and next friend;

Plaintiffs,

vs.

BOARD OF EDUCATION OF THE
CITY OF NEW YORK

Defendant.

....

COMPLAINT

Draft #2
City of New York School Complaint
December 29, 1965

Plaintiffs, by their attorneys through their parents and next friends, complaining of defendants allege:

Parties

1. Plaintiffs are Negro students who attend public elementary and junior high schools in the City of New York and are residents of and are domiciled in the City of New York, some with in the Southern District of New York and others ~~in~~ within the Eastern District of New York. All are citizens of the United States. →

2. Plaintiffs are members of a class of students who are required by the practices, rules and regulations promulgated by the defendants acting through its servants, agents, employees, etc. to attend schools entirely or predominantly attended by Negro children; The members of the class that they represent are too numerous to bring before this court, being a substantial percentage of all students attending schools under the jurisdiction of defendant, ~~and the~~ plaintiffs, as members of the class, will fairly and adequately represent all of the members of the class. There are common questions of law and fact affecting the several rights of all members of the

class, and a common relief is sought. The plaintiffs bring this action as a class action pursuant to Rule 23(a)(3), Federal Rules of Civil Procedure by their parents and next friends pursuant to Rule 17(c), Federal Rules of Civil Procedure.

3. Defendant, Board of Education of the City of New York (hereinafter "the Board")with its main office within ~~in~~ the Eastern District of New York and many of the schools under its control in both the Southern and Eastern Districts of New York, is the duly constituted statutory body authorized by law to manage, operate and conduct public elementary and junior high schools within the City of New York and to make rules and regulations for the conduct of said schools, and more particularly including the hiring and assignment of teachers.

Jurisdiction

4. The jurisdiction of this court is based upon:

(a) The Fourteenth Amendment to the United States Constitution and more particularly the clause thereof enjoining states from denying equal protection of the law to plaintiffs and all others similarly situated.

(b) Title 28 U. S. Code §1343 (3)

(c) Title 42 U. S. Code §1981

(d) Title 42 U. S. Code §1983

(e) Title 42 U. S. Code §1986

(f) Title 42 U. S. Code §1988

(g) ~~Title IV of the U.S. Civil Rights Act of 1964.~~

5. This is an action for a declaratory judgment and for a permanent injunction pursuant to Title 28, U. S. Code 2201 and 2202, to declare arbitrary, unreasonable, unlawful and unconstitutional certain conduct practices and procedures of defendant, its agents, servants and employees in assigning teachers to schools attended by plaintiffs and others similarly situated, and further to enjoin and restrain permanently the continuance of said practices as more fully set forth below in paragraph 7 hereof and for other and further relief.

Statement

6. Defendant, acting in itw own capacity and through agents, servants, representatives and employees, have the duty and obligation to hire and assign teachers to the public schools of New York City

under their jurisdiction, including elementary and junior high, including particularly the schools attended by plaintiffs and all others similarly situated which schools as stated above are entirely or predominantly attended by Negro students.

7. In pursuance of its duties, defendant, acting through its agents,representatives, servants and employees, have knowingly and willfully assigned teachers to the said schools attended by plaintiffs and all others similarly situated, in such manner so as to discriminate on grounds of race and color against plaintiffs and all others similarly situated, as follows:

(a) they have knowingly and willfully assigned more unlicensed, inexperienced, and unskilled teachers to elementary and junior high schools attended by the plaintiffs and others similarly situated than they have assigned to other schools attended entirely or predominantly by white children.

(b) Information compiled by the defendant show that teachers have been discriminatorily assigned in the manner described in subparagraph (a), as more fully shown on Exhibits A, B. and C. attached hereto and made a part hereof drawn from the study Pupils and Schools in New York City, (1965) prepared by Sheldon and Glazier, under the auspices of the Russell Sage Foundation, and based in large part upon information supplied by defendant, its agents, representatives, and employees.

(c) Defendant has knowingly failed and neglected to assign teachers of similar skill and experience to the schools attended by plaintiffs as it has ~~in~~ assigned to schools attended ~~by~~ predominantly by white children.

8. By the actions herein before alleged defendant Board has denied to the plaintiffs and others similarly situated due process of law and equal protection of the laws as guaranteed by the laws ~~of the~~ and Constitution of the United States

9. By the actions herein before alleged the defendant has denied to plaintiffs and others similarly situated equal educational opportunity as is given by defendant Board to white children in violation of the Constitution and laws of the United States and the State of New York.

A B C
26 33 44

WHEREFORE, plaintiffs respectfully pray:

(a) that this Court declare the practice, conduct rules and regulations, of the defendant in assigning teachers to school in such a manner as to afford plaintiffs and others similarly situated a less adequate education than is afforded to white students in New York City schools, to be unlawful, unreasonable, arbitrary, and in violation of the Constitution and laws of the United States and the State of New York; and

(b) that the defendant be permanently enjoined and restrained from continuing the aforesaid practice~~,~~ conduct rules and regulations; and

(c) that the defendant be further permanently enjoined and restrained from refusing, failing and neglecting to assign licensed teachers of comparable skill and experience to schools attended by the plaintiffs and others similarly situated so that the teachers assigned to teach plaintiffs and all others similarly situated are similarly licensed and of comparable ~~of equal~~ skill, experience ~~and license~~ are as those assigned to teach in schools attended predominantly by white students.

(d) that defendant be required to submit to this Court a plan whereby the aforesaid discriminatory assignment of personnel will be eliminated under such terms and circumstances as is deemed proper by this Court and

(e) that this Court retain jurisdiction of this action for a period of not less than three years after approval by this Court of any plan submitted by defendant as set forth in (d) above: and

(f) that this Court allow plaintiffs their costs herein, and grant such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

Carl Rachlin
38 Park Row
New York, N.Y.

Paul Chevigny
200 W. 135th Street
New York, New York

George Schiffer
40 E. 49th Street
New York, N.Y.

→ Marvin Karpatkin

William S. Ellis
41 E. 42nd Street
New York, New York

Bradley R. Brewer
70 Morningside Drive
New York, N.Y.

Stephen M. Nagler
38 Park Row
New York, N.Y.

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK
....x

REGINA MYERS, JAMES MYERS, minors by
Mrs. Ruth Myers, their mother and
next friend;

DARRELL BETHEA, a minor, by
Mrs. Frances Bethea, his mother
and next friend;

PAMELA GIST, a minor, by Mrs. Rachel
Gist, her mother and next friend;

ROSALYN GALLOWAY, a minor, by Mrs.
Ella Galloway, her mother and next
friend;

CALVIN CARRINGTON, and LEON CARRINGTON,
minors, by Mrs. Ivy Carrington, their
mother and next friend;

JAMES MABRY and KAREN MABRY, minors,
by Mrs. Elizabeth Mabry, their
mother and next friend;

JACKIE POPE, SHARON POPE,
ROBERT POPE, and TOMMY POPE,
minors, by Mrs. Marie Pope,
their mother and next friend;

LARRY THOMPSON, JERRY THOMPSON
and WILLIAM THOMPSON, minors, by
Mrs. Lela Thompson, their mother
and next friend;

RALPH WALLACE, and DAWN WALLACE,
minors, by Mrs. Ruth Wallace, their
mother and next friend;

For themselves and on behalf of the class
of all other Negro students attending
certain Public Elemantary and Junior High
Schools in the City of New York;

Plaintiffs,

vs.

BOARD OF EDUCATION OF THE CITY OF
NEW YORK

Defendant.
....

66 Civil Action 69
File Number

SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon CARL RACHLIN plaintiff's attorney, whose address is 38 Park Row, New York, New York, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
..................................x

REGINA MYERS, JAMES MYERS, minors, by
Mrs. Ruth Myers, their mother and
next friend;

DARRELL BETHEA, a minor, by
Mrs. Frances Bethea, his mother
and next friend;

PAMELA GIST, a minor, by Mrs. Rachel
Gist, her mother and next friend;

ROSALYN GALLOWAY, a minor, by Mrs.
Ella Galloway, her mother and
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and WILLIAM THOMPSON, minors, by
Mrs. Lela Thompson, their mother
and next friend;

RALPH WALLACE, and DAWN WALLACE,
minors, by Mrs. Ruth Wallace, their
mother and next friend;

For themselves and on behalf of the class
of all other Negro students attending
certain Public Elementary and Junior High
Schools in the City of New York;

Plaintiffs,

vs.

BOARD OF EDUCATION OF THE CITY OF
NEW YORK

Defendant.

COMPLAINT

....x

PLAINTIFFS, BY THEIR ATTORNEYS THROUGH THEIR PARENTS AND NEXT FRIENDS, COMPLAINING OF DEFENDANTS ALLEGE:

Parties

1. Plaintiffs are Negro students who attend public elementary and junior high schools in the City of New York, pursuant to the compulsory education laws of the State of New York, and are residents of and are domiciled in the City of New York, some within the Counties of New York and Bronx within the Southern District of New York and others within the County of Kings within the Eastern District of New York. All are citizens of the United States and of the State of New York. Said REGINA MYERS and said JAMES MYERS attend Public School 155 in Brooklyn; said DARRELL BETHEA attends Public School 83 in Brooklyn; said PAMELA GIST attends Public School 305 in Brooklyn; said ROSALYN GALLOWAY attends Public School 3 in Brooklyn; said CALVIN CARRINGTON and said LEON CARRINGTON attend Public School 144 in Brooklyn; said JACKIE POPE, said ROBERT POPE, said SHARON POPE and said TOMMY POPE, attend Public School 68 in Manhattan; said LARRY THOMPSON and said JERRY THOMPSON attend Public School 68 in Manhattan and said WILLIAM THOMPSON attends Public School 197 in Manhattan; said RALPH WALLACE attends Public School 63 in the Bronx, and said DAWN WALLACE attends Public School 63 in the Bronx. All of said schools are under the control, management and operation of the said defendant.

2. Plaintiffs are members of a class of students who are required by the practices, rules and regulations promulgated by the defendant acting through its servants, agents, employees, etc., to attend schools entirely or predominantly attended by Negro children. The members of the class that they represent are too numerous to bring before this court, being a substantial percentage of all students attending schools under the jurisdiction of defendant; plaintiffs, as members of the class, will fairly and adequately

represent all of the members of the class. There are common questions of law and fact affecting the several rights of all members of the class, and a common relief is sought. The plaintiffs bring this action as a class action pursuant to Rule 23(a)(3), Federal Rules of Civil Procedure by their parents and next friends pursuant to Rule 17(c), Federal Rules of Civil Procedure.

3. Defendant, Board of Education of the City of New York (hereinafter "the Board") with its main office located in the Borough of Brooklyn, City of New York, within the Eastern District of New York is a body corporate organized under the laws of the State of New York, and is the duly constituted statutory body authorized by law to manage, operate and conduct public elementary and junior high schools within the City of New York, including the schools attended by plaintiffs and the members of the class plaintiffs represent, and to make rules and regulations for the conduct of said schools, and including, without limitation, rules and regulations governing the hiring and assignment of teachers.

Jursidiction

4. The jurisdiction of the court is based upon:

(a) The Fourteenth Amendment to the United States Constitution and more particularly the clause thereof enjoining states from denying equal protection of the law to plaintiffs and all others similarly situated.
(b) Title 28 U. S. Code §1343 (3)
(c) Title 42 U. S. Code §1981
(d) Title 42 U. S. Code §1983
(e) Title 42 U. S. Code §1986
(f) Title 42 U. S. Code §1988

5. This is an action for a declaratory judgment anf for a permanent injunction pursuant to Title 28 U. S. Code §2201 and §2202, to declare arbitrary, unreasonable, unlawful and unconstitutional certain conduct,

practices, and procedures of defendant, its agents, servants and employees in assigning teachers to schools attended by plaintiffs and others similarly situated, and further to enjoin and restrain permanently the continuance of said practices as more fully set forth in paragraph 7 hereof, and for other and further relief.

Statement of Claim

6. Defendant, acting in its public corporate capacity and through agents, servants, representatives and employees, has the duty and obligation to hire and assign teachers to the public schools of New York City and under their jurisdiction, including elementary and junior high schools, including most particularly the schools attended by plaintiffs, and all others similarly situated, which schools are entirely or predominantly attended by Negro students.

7. Defendant, acting through its agents, representatives, servants and employees, has knowingly and willfully assigned and continued to assign teachers to the said schools attended by plaintiffs and all others similarly situated, in such manner so as to discriminate on the grounds of race and color against plaintiffs, and all others similarly situated as follows:

(a) It has knowingly and willfully assigned substantially more unlicensed, inexperienced, and unskilled teachers to elementary and junior high schools attended by the plaintiffs and others similarly situated than they have assigned to other schools attended entirely or predominantly by white children.

(b) Defendant has knowingly failed and neglected to assign teachers of similar skill and experience to the schools attended by plaintiffs as it has assigned to schools attended predominantly by white children.

8. By the actions herein before alleged defendant Board has denied to the plaintiffs and others similarly situated due process of law and equal protection of the laws as guaranteed by the laws and Constitution of the United States.

9. By the actions herein before alleged the defendant has denied to plaintiffs and others similarly situated equal educational opportunity to that provided by defendant to white children in violation of the Constitution and laws of the United States and the State of New York.

10. Defendant has performed these acts and omissions knowingly and willfully as described above. Attached hereto is information that teachers have been discriminatorily assigned in the manner described above and as designated on Exhibits A, B, C, attached hereto and made a part hereof. These exhibits are drawn from the study Pupils and Schools in New York City (1965) prepared by Sheldon and Glazier under the auspices of the Russell Sage Foundation, and based in large part upon information supplied by defendant, its agents, representatives, and employees.

WHEREFORE, PLAINTIFFS RESPECTFULLY PRAY:

(a) that this Court declare the practice, conduct, rules and regulations of the defendant, its officers, agents, servants, representatives and employers in assigning teachers to schools in the discriminatory manner described herein to be unlawful, unreasonable, arbitrary, and in violation of the Constitution and laws of the United States and the State of New York; and

(b)that the defendant, its officers, agents, servants, employees and representatives, be permanently enjoined and restrained from continuing the aforesaid practice, conduct and regulations; and

(c) that the defendant be permanently enjoined and restrained from refusing, failing and neglecting to assign licensed teachers of comparable skill and experience to schools attended by the plaintiffs and others similarly situated so that the teachers assigned to teach plaintiffs and all others similarly situated are similarly licensed and of comparable skill and experience as are those assigned to teach in schools attended entirely or predominantly by white students.

(d) that defendant be required to submit to this court within a reasonable time to be determined by the court herein, a plan whereby the aforesaid discriminatory assignment of personnel will be eliminated under such terms and circumstances as is deemed proper by this court; and

(e) that this court retain jurisdiction of this action for a period of not less than three years after approval by this court of any plan submitted by defendant as set forth in (d) above; and

(f) that this court allow plaintiffs their costs herein, and grant such other and further relief as to this court may seem just and proper.

Respectfully submitted,

Carl Rachlin
38 Park Row
New York, N.Y.

Paul Chevigny
200 W. 135th Street
New York, N.Y.

George Schiffer
40 E. 49th Street
New York, N.Y.

Marvin M. Karpatkin
660 Madison Avenue
New York, N.Y.

William S. Ellis
41 E. 42nd Street
New York, N.Y.

Bradley R. Brewer
70 Morningside Drive
New York, N.Y.

Stephen M. Nagler
38 Park Row
New York, N.Y.

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

- -x

REGINA MYERS, JAMES MYERS, minors by
MRS. RUTH MYERS, their mother and
next friend;

DARRELL BETHEA, a minor, by
MRS. FRANCES BETHEA, his mother
and nex friend;

PAMELA GIST, a minor, by MRS. RACHEL
GIST, her mother and next friend;

ROSALYN GALLOWAY, a minor, by MRS.
ELLA GALLOWAY, her mother and next
friend;

CALVIN CARRINGTON, and LEON CARRINGTON,
minors, by MRS. IVY CARRINGTON, their
mother and next friend;

JAMES MABRY and KAREN MABRY, minors,
by MRS. ELIZABETH MABRY, their
mother and next friend;

JACKIE POPE, SHARON POPE,
ROBERT POPE, and TOMMY POPE,
minors, by MRS. MARIE POPE,
their mother and next friend;

LARRY THOMPSON, JERRY THOMPSON
and WILLIAM THOMPSON, minors, by
MRS. LELA THOMPSON, their mother
and next friend;

RALPH WALLACE, and DAWN WALLACE,
minors, by MRS. RUTH WALLACE, their
mother and next friend;

For themselves and on behalf of the class
of all other Negro students attending certain
Public Elementary and Junior High Schools
in the City of New York;

Plaintiffs,

-against-

THE BOARD OF EDUCATION OF THE CITY OF
NEW YORK,

Defendant.

- -x

Defendant by its attorney, J. LEE RANKIN, Corporation Counsel, answering the complaint herein, alleges:

1. Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1".

2. Denies each and every allegation contained in paragraph "2".

3. Denies each and every allegation contained in paragraph "3", except admits that the defendant is a body corporate organized under the laws of the State of New York, and is duly constituted to manage, operate and conduct public elementary and Junior High Schools in the City of New York.

4. Denies so much of paragraph "4" that implies or alleges that defendant has violated the 14th amendment to the UNITED STATES CONSTITUTION or that it has violated any of the sections of the United States Code cited therein.

5. Denies so much of paragraph "5" that alleges or implies that any acts of the defendant are in any way arbitrary, unreasonable, unlawful and unconstitutional.

6. Denies each and every allegation contained in paragraph "6" that alleges or implies that any of the acts set forth therein are in any way illegal or unconstitutional.

7. Denies each and every allegation contained in paragraphs "7", "7a", "7b", "8", "9" and "10".

WHEREFORE, defendant respectfully asks that the complaint herein be dismissed together with costs.

J. LEE RANKIN
Corporation Counsel
Attorney for Defendant
Office and P.O. Address:
Municipal Building
Borough of Manhattan
New York, N.Y., 10007

TO:

CARL RACHLIN, ESQ.
Attorney for Plaintiffs
38 Park Row
New York, N.Y., 10007

NEW YORK CITY PUBLIC SCHOOLS
Office of Education Information Services and Public Relations

July 25, 1966

Statement issued by Dr. Bernard E. Donovan, Superintendent of Schools, concerning staffing of schools for the school year beginning in September, 1966:

STAFFING

It is important that the schools be staffed adequately for the school year beginning September 1966. It is particularly important that those schools which serve disadvantaged pupils be staffed to the greatest extent possible with regularly licensed and experienced teachers. To accomplish this our Division of Personnel has taken and is taking the following actions:

1. All transfers of teachers have been completed. Transfers are limited because a teacher may not apply for transfer until five years of service have been rendered in a school under regular appointment. This new regulation will increase the experience index in disadvantaged schools.
2. All regularly licensed teachers on eligible lists have been appointed (appr. 4,000). These appointments went almost entirely to schools with disadvantaged pupils. Certain schools with severe staffing problems were "saturated" with appointments so as to more than balance anticipated declinations. Teachers must serve five years in a school before being eligible for transfer.
3. Assignments of experienced substitute teachers are now being made. These assignments will also be directed almost entirely to schools with concentrations of disadvantaged pupils. Substitutes declining such assignments may not be employed as regular substitutes by any other school.
4. After regularly appointed teachers and experienced substitutes are placed, existing vacancies will be filled by licensed

. more .

substitutes who are available. Thus the schools serving disadvantaged pupils are being given priority to the assignment of regularly appointed or experienced substitute teachers.

5. The conditionally licensed substitute teachers who will participate in an intensive and carefully planned summer preparation program at City University will then be used to fill any remaining vacancies. Their assignments will be to various schools throughout the city with only a minimal number going to disadvantaged schools. Schools receiving these newly licensed teachers have been directed to have a specially designated assistant principal receive them, give them proper orientation and then provide constructive supervision for them during their first year of teaching. These teachers are being trained under Title 1 federal funds to help fill staff shortages so that experienced teachers may be assigned to schools with disadvantaged pupils as outlined above.
6. Special efforts will be made to reach applicants who failed in previous examinations in order to review the reasons for failure and help them to prepare to retake the examination.

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

- -x

REGINA MEYERS, et al.,

Plaintiffs,

-against-

BOARD OF EDUCATION OF
THE CITY OF NEW YORK,

Defendant.

- -x

Defendant answers the interrogatories submitted by the plaintiff as follows:

EXPLANATORY NOTE ON ETHNIC DATA

The Board of Education does not require any child attending a school under its jurisdiction to state what his race, religion or national origin is. The record of the defendant showing the ethnic makeup of the student population is the result of visual-observation reports made by the teachers, and therefore 100% accuracy of these figures cannot be claimed.

The ethnic population is broken down into three groups: Negro, Puerto Rican and Others, the latter group comprising all ethnic groups other than Negro and Puerto Rican. For purpose of the instant interrogatories and by stipulation with plaintiffs' attorney, the figures for Negro and Puerto Rican children have been joined together under the general heading of "Non-White," while Others has been listed under the general heading of "White," notwithstanding the fact that there are many Non-Whites included in this figure.

In order to provide the figures requested by plaintiffs, defendant has conducted an extensive search to many diverse sources of information, some official, some non-official. In some cases, actual figures were not available, but the figures set forth herein are believed to be as accurate as possible.

1. In response to Interrogatory No. 1, defendant states:

a. The number of teachers employed by the Board of Education in the elementary schools is as follows:

School Year	Number of Teachers
1957-1958	19,288
1958-1959	19,510
1959-1960	19,571
1960-1961	19,229
1961-1962	19,845
1962-1963	20,987
1963-1964	22,127
1964-1965	23,267
1965-1966	23,333

b. and c. The number of teachers employed by the Board of Education in elementary schools in which there are not less than 90% White or not less than 90% Non-White is as follows:

School Year	Non-White	White
1957-1958	2,688	8,192
1958-1959	3,170	7,527
1959-1960	3,192	6,709
1960-1961	4,145	6,581
1961-1962	4,445	5,982
1962-1963	4,999	5,153
1963-1964	7,371	5,103
1964-1965	6,375	4,815
1965-1966	6,828	4,261

d. The number of teachers employed by the Board of Education in Junior High Schools was as follows:

Junior High Schools

School Year	Number of Teachers
1957-1958	5,567
1958-1959	5,769
1959-1960	6,729
1960-1961	8,244
1961-1962	8,629
1962-1963	9,765
1963-1964	10,437
1964-1965	11,109
1965-1966	11,121

e. and f. The number of teachers employed by the Board of Education in Junior High Schools in which there were either 90% Non-White or 90% White students was as follows:

Junior High Schools

Sch.Yr.	Non-White	White
1957-1958	755	2,360
1958-1959	726	2,587
1959-1960	703	2,450
1960-1961	909	2,353
1961-1962	1,096	1,643
1962-1963	1,119	1,434
1963-1964	1,509	1,434
1964-1965	2,383	1,400
1965-1966	2,463	1,218

2. In response to Interrogatory No. 2, defendant alleges that there are no unlicensed teachers employed in the New York City School System.

3. In response to Interrogatory No. 3, defendant alleges:

a. The qualifications to obtain a license to teach in the elementary schools of the City of New York are set forth in Section 315 of the BY-Laws of the Board of Education, which reads as follows:

> "Section 315. Teacher of Common Subjects (Grades 1-6).
>
> "Preparation: Completion of a five-year program of collegiate prep-

aration which shall include the baccalaureate degree and 30 semester hours of approved graduate courses, as set forth under (a) or (b) or (c) below:

"(a) Complete preparation of an institution or institutions having a program for the teaching of early childhood and upper elementary grades (N-6) and/or for the teaching or early childhood and upper elementary grades and an academic subject in the early secondary grades (N-9), registered and approved by the State Education Department for permanent certification under the Regulations of the Commissioner of Education effective September 1, 1966, as certified by such institution or institutions; or

"(b) The holding of a New York State permanent certificate valid for teaching in the early childhood and upper elementary grades (N-6) and/or for the teaching of early childhood and upper elementary grades and an academic subject in the early secondary grades (N-9), granted by the State Education Department under the Regulations of the Commissioner of Education effective September 1, 1966; or

"(c) The completion of a program of study to the number of semester hours and the distribution thereof required by the Regulations of the Commissioner of Education effective September 1, 1966 for a permanent certificate to teach the early childhood and upper elementary grades (N-6) and/or for the teaching of early childhood and upper elementary grades and an academic subject in the early secondary grades (N-9).

"Substitution: Under Preparation (c) an applicant may offer a term of appropriate teaching in lieu of each 75 clock hours of observation and supervised practice teaching.

"Time Extension: There shall be no time extension for the completion of the baccalaureate degree. However, under Preparation (c) an applicant shall be permitted to complete within five years following the date for meeting the academic and professional qualifications as prescribed in Section 238: Any 30 of

> the required 90 semester hours in liberal arts; 6 of the required 30 semester hours in professional courses; and the fifth year of preparation. Upon failure of an applicant to complete all requirements within such period, the license shall terminate. (As added March 24, 1965, eff., Sept. 1, 1966.)"

Please note that the first paragraph of Section 315 was added on or about June 21, 1962.

b. The qualifications to obtain a license to teach in the Junior High Schools of the City of New York are set forth in Sections 332 and 332b of the By-Laws of the Board of Education, and read as follows:

> "Section 332. Teacher of General Subject.
>
> "Preparation: Completion of a five-year program of collegiate preparation, which shall include the baccalaureate degree and, in addition, 30 semester hours of approved garduate courses in, or related to, an academic field or the teaching of an academic subject, as more particularly set forth under (a) or (b) below.
>
> "(a) Complete preparation at an institution or institutions having a program for the preparation of secondary school teachers of academic subjects registered and/or approved by the State Education Department; or
>
> "(b) Completion of a program of study to the number of semester hours and the distribution thereof required by the Regulations of the State Commissioner of Education for a permanent certificate to teach the appropriate academic subject.
>
> "Substitution: In lieu of the requirement of supervised observation and practice teaching in the secondary school as required under Preparation (b) above, the applicant may offer:
>
> > "One year of teaching in grades above the sixth year; or
> >
> > "In the case of science subjects, two years as laboratory assistant

in a secondary school.

"Time Extension: Applicants shall be permitted to complete, within one year following the date for meeting the academic and professional qualifications as prescribed in Section 238, 6 of the required 18 semester hours in professional courses, and within three years following the date for meeting the academic and professional qualifications as prescribed in Section 238, one-third of the semester hours in related subject courses and the additional requirement of 6 semester hours in graduate courses in professional courses or in related subject courses or in a combination of both, and the distribution of courses in general-liberal education as required by the Regulations of the State Commissioner of Education. Upon the failure of an applicant to complete by such dates the full requirement of professional and related subject courses, the license shall terminate. (As added June 5, 1963; as amended Jan. 8, 1964.)"

"Section 332b. Teacher of Special Subject.

"Preparation: A baccalaureate degree and 30 semester hours of approved post-college courses.

"The said preparation shall include or be supplemented by undergraduate or graduate courses as follows:

"(a) 18 semester hours in approved and appropriate courses including courses as follows to the minimum indicated:

"1) 2 semester hours in philosophy of education or principles of education or history of education;

"2) 4 semester hours in the psychology of learning or in adolescent growth and development, or any combination of the foregoing;

"3) 2 semester hours in the problems of secondary school education;

"4) 2 semester hours in methods of teaching the subject in secondary schools; and

"5) 6 semester hours in observation and practice teaching in the subject in grades above the sixth year.

"(b) 36 semester hours in approved courses related to the subject.

"For license as teacher of fine arts, the preparation requirements for the permanent certificate valid for teaching art in secondary schools as set forth in the Regulations of the State Commissioner of Education, as amended, effective September 1, 1962, shall be substituted for the preparation requirements described above.

"Substitution (a): In examinations announced prior to January 1, 1965, applicants in special subjects may offer in lieu of 15 of the additional 30 semester hours required beyond the baccalaureate degree, one year of approved and appropriate occupational experience; but the specific course requirements under sub-paragraphs (a) and (b) of this Section shall be satisfied.

"Substitution (b): In lieu of 5) above, the applicant may offer:

"One year of teaching in grades above the sixth year; or

"Two years of experience in teaching in grades below the seventh year; or Two years of experience in teaching the subject.

"Substitution (c): In examinations announced prior to January 1, 1965, applicants for license as teacher of fine arts may offer in lieu of 15 of the additional 30 semester hours in graduate courses required beyond the baccalaureate degree, one year of approved and appropriate occupational experience.

"Substitution (d): Applicants for license as teacher of fine arts may offer in lieu of the requirement in observation and practice teaching:

"One year of teaching in grades above the sixth year; or

"Two years of experience in teaching in grades below the seventh year; or

"Two years of experience in teaching the subject.

"__Time Extenstion (For all special subjects except fine arts)__: Applicants shall be permitted to complete within one year following the date for meeting the academic and professional qualifications as prescribed in Section 238, 6 of the required 18 semester hours in professional courses enumerated under Preparation (a), and within two years 12 of the required 36 semester hours in related subject courses enumerated under Preparation (b). Upon the failure of an applicant to complete by such dates the full requirement of professional and related subject courses, the license shall terminate.

"__Time Extension__: Applicants for license as teacher of fine arts shall be permitted to complete 6 of the required 18 semester hours of professional courses within one year, and 18 of the required 54 semester hours in approved courses related to the subject within three years following the date for meeting minimum academic and professional qualifications as prescribed in Section 238. Upon failure of an applicant to complete the requirements within such periods, the license shall terminate. (As added June 5, 1963.)"

4. In response to Interrogatory No. 4, defendant alleges that in order to teach either in the elementary or Junior High schools, a person must have a license issued by the Superintendent of Schools after the Board of Examiners of the Board of Education of the City of New York certifies that the person has met the aforesaid qualifications and has passed an appropriate examination conducted by the Board of Examiners.

5. In response to Interrogatory No. 5 defendant

alleges that prior to 1963 a teacher wishing to transfer from one school to another school had to find, on her own initiative, a school with a vacancy, and then had to obtain the approval of the Principal of the school to which she sought transfer, the approval of the Principal of the school to which she was assigned, and from both Assistant Superintendants which were in charge of the local School Districts in which the two schools, respectively, were located.

Since 1963 the right to transfer and the method of obtaining a transfer have been set forth in the agreements entered into between the Board of Education and the United Federation of Teachers. The agreement for the years 1963 to 1965 is attached hereto as Exhibit "A"; the agreement for the years 1965 to 1967 is attached hereto as Exhibit "B".

6. In response to Interrogatory No. 6, defendant again alleges that there are no unlicensed teachers in the employ of the Board of Education.

7. In response to Interrogatory Nos. 7a, 7b and 7c, defendant alleges that the right to transfer has been included as part of a collective-bargaining agreement entered into between the Board of Education and the United Federation of Teachers (par. 5, supra).

Upon information and belief, there are no minutes, memoranda, letters, or other documents outside the actual agreement, relating to the right to transfer.

Upon information and belief, the sole arbitration decision involving the right to transfer was between the United Federation of Teachers and the Board of Education. A copy of the decision of the Arbitrator, dated March 10, 1965, is attached hereto as Exhibit "C".

8. and 9. In response to Interrogatory Nos. 8 and 9, defendant alleges that there are no records available at the office of the Board of Education which would indicate how many licensed teachers had been assigned to schools with no fewer than 90% White pupils, or no fewer than 90% of Non-White pupils.

10. and 11. In response to Interrogatory Nos. 10 and 11, defendant again alleges that there are no non-licensed teachers employed by the Board of Education.

12., 13., 14., 15., and 16. In response to Interrogatory Nos. 12., 13., 14., 15., and 16., defendant alleges that no records are kept pertaining to the information requested in these Interrogatories.

17. In response to Interrogatory No. 17, for the school year 1965 to 1966, the following elementary schools had an enrollment in which the pupils were not fewer than 90% White.

PUPILS WERE NOT FEWER THAN 90% WHITE - ELEMENTARY SCHOOLS

Brooklyn

P.S. 200	1940 Benson Avenue
205	6701 - 20th Avenue
247	7000 - 21st Avenue
95	345 Van Sicklin Street
97	Stillwell Ave. & Avenue S
101	Benson Avenue & Bay 35 Street
215	Avenue S & E. 2d Street
216	350 Avenue X
52	2675 E. 29 St.
99	1120 E. 10 St.
119	3829 Ave. K
153	1970 Homecrest Ave.
194	Avenue W & Knapp Street
195	131 Irwin St.
199	1100 Elm Avenue

Pupils Were Not Fewer Than 90%
White - Elementary Schs.
Brooklyn (continued)

P.S.	203	Ave. M & E. 52 Street
	207	4011 Fillmore Avenue
	209	Avenue 2 & E. 7 Street
	222	Quentin Rd. & E. 33d Street
	236	6302 Avenue U
	238	1633 E. 8 Street
	251	1037 E. 54 St.
	277	2529 Geritsen Avenue
	144	1077 Remsen Avenue
	115	515 Knickerbocker Avenue
	272	101 - 24 Seaview Ave.
	171	528 Ridgwood Ave.
	286	2525 Haring St.
	152	2310 Glenwood Rd.
	179	202 Ave. C
	276	1070 E. 83 St.
	249	Catn. Ave. & Rugby Rd.
	102	211 - 77d St.
	104	9115 - 5th Ave.
	127	7th Ave. & 79 St.
	170	7109 - 6 Ave.
	185	8601 Ridge Blvd.
	48	6015 - 18 Ave.
	112	15 Ave. & 72 St.
	163	1664 Benson Ave.
	176	1225 - 69 St.
	201	8010 - 12 Ave.
	204	8101 - 15 Ave.
	279	1400 Benson Avenue
	121	68 Harrisn. Avenue
	128	8310 - 21 Ave.
	177	Ave. P & W1 St.
	180	16 Ave. & 57 Street
	186	7601 - 19 Ave.
	192	4715 - 18 Ave.

PUPILS WERE NOT FEWER THAN 90%
WHITE - ELEMENTARY SCHOOLS

Queens

P.S.	2	75-10 21 St. - Flushing
	27	14-14 122 St. - College Pt.
	69	7202 - 37 Avenue - Jackson Hts.
	79	149 St. & 15 Drive, Whitestone
	152	62 St. & Northern Blvd., Woodside
	169	18-25 212 St., Bayside
	184	163 St. & 21 Rd., Whitestone
	193	152-20 11 Ave., Whitestone
	11	54-25 Skillman Ave., Woodside
	84	22-45 41 St., LIC
	85	23-70 31 St., LIC
	199	39-20 48 Ave., LIC
	12	42-02 72 St., Woodside
	13	55-01 94 St., Elmhurst
	49	7915 Penelope Ave., Middle Village
	102	55-24 Van Horn St., Elmhurst
	128	69-26 65 Dr., Middle Village

Pupils Were Not Fewer Than 90%
White - Elementary Schs.
Queens (cont'd.)

P.S. 139	93-06 63 Dr., Rego Park
174	65-10 Dieterle Crescent, Rego Pk.
175	64-35 102 St., Rego Park
206	61-21 97 Place, Rego Pk.
220	62-10 108 St., Forest Hills
22	153-01 Sanford Ave., Flushing
24	14-11 Holly Avenue, Flushing
29	125-10 23d Ave., Clason Point
32	171-11 35 Ave., Flushing
107	167-02 215 Ave., "
120	136 Street & 58th Avenue, Flushing
163	159-01 59th Avenue, Flushing
164	77th Avenue & 137th St., Flushing
165	70 Rd. & 150th St., Flushing
173	67 Ave. & Fresh Meadows Lane., Flus.
200	70-10 164th Street., Flushing
51	143-26 101st St., Jamaica
58	93-02 97th Ave., Ozone Park
62	97-25 108th St., Roslyn Hts.
63	90-15 Sutter Avenue, Ozone Park
64	82-01 101st Ave., " "
66	85-11 102nd St., Roslyn Hts.
97	85-52 85th St., Woodside
100	111-11 118th St., Jamaica
108	108-10 109th Ave., Ozone Pk.
113	87-21 79th Ave., Glendale
146	98-01 159th Ave., Howard Beach
196	113th Street, Forest Hills
55	131-10 97th Ave., Roslyn Hts.
33	91-37 222d St., Queens Village
82	88-02 144th St., Jamaica
99	82-37 Kew Gardens Rd., Kew Gardens
109	213-10 92d Ave., Queens Village
115	80-51 261st St., Forest Park
117	143d St. & 85th Rd., Jamaica
135	89 Ave. & 207 St., Queens Village
170	87-41 Parsons Blvd., Jamaica
186	252-12 72d St., Bayside
46	218 St. & 67 Ave., Bayside
94	41-77 Little Neck Pkwy., Little Neck
98	39-41 Main Ave., Douglaston
130	200-01 42d Ave., Bayside
159	205-01 33d Ave., Bayside
177	56-37 188th St., Flushing
203	53-11 Springfield Blvd., Bayside
232	153-28 83d St., Howard Beach
21	142-06 37th Ave., Flushing
181	148 Ave. & 230 St., Springfield
195	253-50 149th Ave., Rosedale
219	Main St. & Corvett Rd., Flushing
47	W. 9 & 10 Rd. - 98 St., Broad Channel
207	89 St. & 160 Ave., Howard Beach
179	196-35 Peck Ave., Flushing
188	218-12 Hartland Ave.
205	75-25 Bell Blvd., Bayside
213	231-02 67th Ave.
221	57-40 Marathon Pkway., L.#6 Neck

Pupils Were Not Fewer Than 90%
White - Elementary Schs. (Cont'd.)

Manhattan

P.S. 23	70 Mulberry St.

Bronx

P.S. 14	3041 Bruckner Blvd.
96	650 Waring Ave.
17	190 Fordham City,City Island
24	660 W. 236 St.
81	W. 256 St. & Riverdale Ave.

Richmond

P.S. 19	780 Post Ave.
21	168 Hooke Pl.
22	1860 Forest Ave.
26	4108 Victory Blvd.
29	1581 " "
30	Fiske & Leonard Ave.
45	58 Lawrence Ave.
41	Clasen St. & Locust Ave.
42	27 Augusta Ave.
48	1075 Tangee St.
50	Adelaide Ave., Flint & Whitehall Sts.
12	109 Rhine Ave.
38	421 Lincoln Ave.
52	Ruell & Mason Ave.
1	Sumit St.
3	80 S. Goff Ave.
4	4210 Arthur Hill Rd.
5	Kingston Ave. & Reisens St.
8	Lindenwood Rd. & Park Terrace
13	161 Hylar Blvd.
35	60 Foote Ave.
36	Jefferson Blvd. & Lamont Ave.
39	Sand Lot & Montplant Ave.
23	Pinewood & Maplewood Ave.
55	Ander Rd. & Koch Blvd.

18. In response to Interrogatory No. 18 for the school year 1965 to 1966, the following Junior High Schools had an enrollment in which the pupils were not fewer than 90% White.

PUPILS WERE NOT FEWER THAN 90% WHITE - JUNIOR HIGH SCHOOLS

Brooklyn

P.S. 259 7301 Ft. Hamilton Pkway.
96 99 Ave.P
228 Ave. S & W. 4 St.
234 1875 E. 17 St.
240 2502 Nostrand Ave.
278 1925 Stuart St.
78 Island Ave. & E. 68 St.
43 1075 Ocean View Ave.

Queens

P.S. 185 147-26 25th Dr., Flushing
194 154-60 17th Ave., Whitestone
157 64 Ave. & 102 St., Rego Pk.
189 144-80 Barclay Ave., Flushing
218 65-21 Main St., Flushing
172 81-14 257th St., Floral Pk.
74 61-15 Oceania St., Bayside

Richmond

P. S. 2 333 Midland Ave.

19. In response to Interrogatory No. 19 for the school year 1965 to 1966, the following elementary schools had an enrollment in which the pupils were not fewer than 90% Non-White.

PUPILS WERE NOT FEWER THAN 90% NON-WHITE - ELEMENTARY SCHOOLS

Brooklyn

P.S. 125 264 Blake Ave.
256 114 Kosciuske St.
270 241 Emerson Pl.
262 500 Macan St.
67 51 St. Edwards St.
289 900 St. Marks Ave.

Pupils Were Not Fewer Than 90%
Non-White - Elementary Schs.

Brooklyn (Continued)

P.S. 144	430 Howard Ave.
137	121 Saratoga Ave.
184	273 Newport St.
284	220 Watkins St.
46	100 Clermont Ave.
27	Nelson & Hicks Sts.
138	760 Prospect Pl.
87	1172 Herkimer St.
175	226 Bristol St.
298	85 Watkins St.
133	375 Butler St.
305	344 Monroe St.
59	211 Throop St.
257	70 Varet St.
191	1600 Park Pl.
304	280 Hart St.
309	794 Monroe St.
73	241 McDougal St.
113	705 Evergreen Ave.
63	116 Williams Avenue
174	574 Dumont Avenue
156	104 Sutter Avenue
129	640 Quincy Street
30	165 Conover Street
19	325 E. 3d St.
151	763 Knickerbocker Avenue
155	1355 Herkimer St.
299	88 Woodbine St.
26	1014 Lafayette Ave.
28	1001 Herkimer St.
183	76 Riverdale Ave.
307	York St. & Hudson Avenue
37	75 S. 4th St.
122	68 Harrison Ave.
157	850 Kent Ave.
297	700 Park Ave.
40	273 Ralph Ave.
83	1630 Dean St.
120	Beaver St. & Orion Pl.
182	720 Dumont Ave.
167	1025 Easton Pkway.
11	419 Waverly Ave.
3	50 Jefferson Ave.
41	Newport Ave. & Osborn St.
42	686 Classon Ave.
44	432 Monroe St.
54	Sanford St. (#195)
93	31 New York Ave.
147	325 Bushwick Ave.
148	Ellery St.
168	94 Throop Ave.
21	180 Chauncy Street
25	787 Lafayette Avenue

PUPILS WERE NOT FEWER THAN 90%
NON-WHITE ELEMENTARY SCHOOLS (Cont'd.)

Queens

P.S.	15	121-15 Lucas St., Springfield Gardens
	36	187-01 Foch Boulevard, St. Albens
	40	109-20 Union Hall St., Jamaica
	48	155-02 108th Ave.
	116	107-25 Wren Pl.
	123	145-01 119th Ave., S. Ozone Pk.
	140	116 Ave. & 116 St., Jamaica
	160	109-59 Inwood St.
	118	190-20 109th Rd., Hollis
	136	201-15 115th Ave., St. Albens
	155	130-02 115th Ave., S. Ozone Pk.
	50	143-26 101st Ave., Jamaica
	45	126-28 S. Ozone Park

Manhattan

P. S.	72	131 E. 104th Street
	107	1680 Lexington Avenue
	109	215 E. 99th St.
	121	232 East 103d Street
	57	176 E. 115th St.
	108	1615 Madison Ave.
	170	37 W. 111th St.
	184	31 W. 116
	24	22 W. 128
	68	127 W. 127
	119	257 W. 133
	133	2121 Fifth Avenue
	197	2230 Fifth Avenue
	5	203 Rivington Street
	90	228 W. 148 St.
	156	2960 Eighth Ave.
	186	521 W. 145th St.
	194	242 W. 144th St.
	179	140 W. 102d St.
	80	415 E. 120 St.
	31	200 Monroe St.
	161	499 W. 133
	79	362 Pleasant Ave.
	188	442 E. Houston St.
	15	E. 4th Street
	83	219 E. 109
	96	E. 120 St. & Second & Third Avenues
	154	250 W. 127
	155	399 E. 117
	34	E. 11th Street & Avenue D
	64	605 E. 9th St.
	39	216 E. 126th St.
	129	425 West 130th Street
	175	175 W. 134 St.
	7	160 W. 120 St.
	144	134 W. 122nd St.
	123	302 W. 140th Street
	4	203 Rivington St.
	171	19 E. 103d Street
	102	315 E. 113d St.
	180	370 W. 120 Street

Pupils Were Not Fewer Than 90%
Non-White - Elementary Schools

Manhattan (Cont'd.)

P. S. 100	21 West 138th Street
101	141st East 11th Street
97	525 E. Houston
168	316 East 105th
113	240 West 113th

Bronx

P. S. 51	810 Trinity Avenue
124	760 East 160th Street
130	750 Prospect Avenue
20	1086 Fox Street
23	793 East 165th Street
39	Longwood Avenue & Kelly Street
54	1241 Intervale Ave.
99	1180 Stebbins Ave.
140	916 Eagle Ave.
146	968 Cauldwell Avenue
2	1363 Fulton Ave.
63	1260 Franklin Ave.
42	Washington Avenue & Claremont Parkway
43	165 Brown Pl.
150	920 East 167th Street
132	1245 Washington Avenue
4	1701 Fulton St.
37	425 E. 145 St.
18	502 Morris Ave.
30	510 W. 141 St.
154	333 E. 135 St.
25	811 E. 149 St.
62	660 Fox St.
66	1001 Jennings Street
49	Third Avenue & East 139th Street
65	E. 141 & Cypress Ave.
5	564 Jackson Ave.
50	1550 Vyse Ave.
60	888 Stebbins Ave.
61	1550 Crotono Pk., E.
75	984 Faile St.
55	450 St. Pauls Pl.
27	519 St. Anns Ave.
110	580 Crotono Pk.
58	East 176th Street & Washington Avenue
1	335 East 152nd Street

20. In response to Interrogatory No. 20 for the school year 1965 to 1966, the following Junior High Schools had an enrollment in which the pupils were not fewer than 90% Non-White.

PUPILS WERE NOT FEWER THAN 90% NON-WHITE - JUNION HIGH SCHOOLS

Manhattan

P. S. 13	East 106th Street & Madison Avenue
117	240 East 109th Street
120	18 E. 120
88	215 W. 114
139	140 W. 140
136	6 Edgemont Avenue
99	410 E. 100
45	2351 First Ave.

Bronx

P. S. 38	701 St. Anns Avenue
120	89 Cauldwell Ave.
136	750 Jennings St.
52	681 Kelly St.
139	345 Brook Ave.
133	1010 Stebbins Avenue
149	360 E. 145 St.
98	1619 Boston Rd.

Brooklyn

P. S. 258	141 Macon Street
35	272 McDonough Street
259	7301 Ft. Hamilton Pkway.
96	99 Ave. P
228	Ave. S & W. 4 St.
234	1875 E. 17 St.
240	2500 Nostrand Ave.
278	1925 Stuart St.
33	70 Tompkins Avenue
117	300 Willoughby Avenue
178	2163 Dear St.
263	210 Chester St.
265	101 Park Ave.
210	188 Rochester Ave.
271	1137 Herkimer St.
78	Island Avenue & East 68th Street
49	223 Graham Ave.
149	700 Sutter Ave.
43	1075 Ocean View Avenue

QUEENS

P. S. 185	147-26 25th Dr., Flushing
194	154-60 17th Avenue, Whitestone
157	64 Avenue & 102nd Street, Rego Park

Pupils Were Not Fewer Than 90%
Non-White - Junior High Schools (Cont'd.)

QUEENS (Cont'd.)

P. S. 189	144-80 Barclay Avenue, Flushing
218	65-21 Main Street, Flushing
172	81-14 257th Street, Floral Park
74	61-15 Oceania Street, Bayside
142	142-10 Waxler Boulevard, Jamaica

Richmond

P. S. 2	333 Midland Avenue

21. In response to Interrogatory No. 21, defendant states that the information requested therein can be found only by going to the schools, themselves, and examining the rosters at each school or by examining the thousands of individual personal records involved. No consolidated records are maintained as to the individual experience of teachers assigned to the various schools.

Dated: New York, N.Y., July 27, 1966.

J. LEE RANKIN
Corporation Counsel
Attorney for Defendant
Office and P.O. Address:
Municipal Building
Borough of Manhattan
New York, N.Y. 10007

TO:

CARL RACHLIN, ESQ.
Attorney for Plaintiffs
Congress of Racial Equality
38 Park Row
New York, N. Y.

44C-2M-701390(60) 114

State of New York,
County of Kings, } *ss.:*

Harold E. Hay, being duly sworn, says that he has been duly designated as Secretary of the Board of Education of The City of New York, and as such that he is an officer of the same. That the foregoing answer is true to his knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by defendant is that it is a corporation; that the grounds of his belief as to all matters not therein stated upon his knowledge are as follows: Information obtained from the books and records of the said Board of Education and from statements made to him by certain officers or agents of the said Board.

Sworn to before me, this
3d day of August 1966

S/ Harold E. Hay

EUGENE M. [illegible]
NOTARY PUBLIC, State of New York
No. 03-7180925
Qualified in Bronx County
Commission Expires March 30, 1968

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

REGINA MEYERS, et al,

Plaintiffs,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Defendant.

SIR: PLEASE TAKE NOTICE THAT the deposition of the Defendant by BERNARD DONOVAN of the County of Kings, City and State of New York, Superintendant of Schools under the jurisdiction of said Defendant will be taken on behalf of the plaintiff upon certain interrogatories, of which a copy is herewith served upon you, and such cross-interrogatories as may be duly served herein, before SHELDON ENGLEHARDT, an attorney and Notary Public whose address is 165 West 46th Street.

Plaintiff's Attorney

Carl Rachlin
38 Park Row
New York, New York

TO: Hon. J. L. Rankin
Corporation Counsel
City of New York and
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SIR: PLEASE TAKE NOTICE THAT the deposition of the Defendant by BERNARD DONOVAN ~~and et al~~, of the County of Kings, City and State of New York, Superintendant of Schools under the jurisdiction of said Defendant will be taken on behalf of the plaintiff upon certain interrogatories, of which a copy is herewith served upon you, and such cross-interrogatories as may be duly served herein, before SHELDON ENGLEHARDT, an attorney and Notary Public whose address is 165 West 46th Street.

____

Plaintiff's Attorney.

Carl Rachlin
~~General Counsel~~
~~c/o CORE~~
38 Park Row
New York, New York

Rankin
To: Hon. J.L. ~~Rankl~~in
Corporation Counsel,
City of New York and
Attorney for Defendant

PROPOSED INTERROGATORIES IN

MYERS V. BOARD OF EDUCATION

TO THE ABOVE NAMES DEFENDANT ____________:

You are hereby notified to answer under oath the interrogatories numbered from 1 to 22, inclusive, as shown below, within fifteen (15) days of the time service i is made upon you, in accordance with Rule 33 of the Federal Rules of Civil Procedure.

Interrogatory No. 1. Set forth the number of teachers licensed and employed by defendant teaching in

(a) elementary schools under the jurisdiction of said defendant for the years 1957-58, 1958-59, 1959-60, 1960-61, 1961-62, 1962-63, 1963-64, 1964,65, 1965-66.

(b) elementary schools under the jursidiction of said defendant for the aforesaid years in which no fewer than 90% of the pupils are white

(c) elementary schools under the jurisdiction of aforesa Deft endant for the aforesaid years in which no fewer than 90% of the pupils therein are non-white

(d) Junior high schools under the jurisdiction of DEFT for the aforesaid years

(e) Junior high schools under the jurisdiction of DEFT endant for the aforesaid years in which no fewer than 90% of the pupils are white

(f) Junior high schools under the jurisdiction of DEFT endant for the aforesaid years in which no fewer than 90% of the pupils herein are non-white.

Interrogatory No. 3. Set forth the number of teachers unlicensed and employed by DEFT endant for the same school years as as referred to in (2) above teaching in

(a) elementary schools under the jurisdiction of said defendant for the years 1957-58, 1958-59, 1959-60, 1960-61, 1961-62, 1962-63, 1963-64, 1964-65, 1965-66.

(b) elementary schools under the jurisdiction of defendant aforesaid years in which no fewer than 90% of the pupils are white

(c) elementary schools under the jurisdiction of DEFT endant for the aforesaid years in which no fewer than 90% of the pupils therein are non-white

(d) Junior high schools under the jurisdiction of DEFT endant for the aforesaid years

(e) Junior high schools under the jurisdiction of DEFT endant for the aforesaid years in which no fewer than 90% of the pupils are white

(f) Junior high schools under the jurisdiction of DEFT endant for the aforesaid years in which no fewer than 90% of the pupils herein are non-white.

Set forth the qualifications of DEFT endant necessary for for a person to obtain a license to teach in

(a) the elementary schools and

(b) the junior high schools under the jurisdiction of DEFT obtaining during school years, since 1957, indicating the changes and modifications in such qualifications and the year of such change or modification

Interrogatory No. 5. Set forth the qualifications of DEFT endant necessary for a person to teach in

(a) the elementary schools

(b) the Junior high schools under thejjurisdiction of DEFT obtaining sinbe1957, indicating the changes and modifications in such qualifications any year of such change or modification

Interrogatory No. 6. Set forth the rules and regulations of defendant obtaining since 1957 concerning the right of a licensed teacher to transfer from one school to another under the jurisdictinn of DEFT endant

Interrogatory No. 7. Set forth the rules and regulations of DEFT endant obtaining since 1957 concerning the right of an unlicensed teacher to transfer from one school to another under the jurisdiction of DEFT endant.

Interrogatory No. 8.

(a) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of;any provisions of any collective bargaining agreements, or any supplements, memoranda of understanding or any ex changes of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendant's employees. If so set forth copies of each such agreement, supplement, memoranda, or letter, ~~or~~

(b) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of any provisions of any collective bargaining agreements, or any exchanges of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendants employees. If so set forth minutes and memorandums etc. of such meetings and collective bargaining sessions.

(c) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of any provisions of any collective bargaining agreements, or any supplements, memorada understanding or any exchanges of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendant's employees. If so set forth copies of grievances, mediation, recommendations co~~mbinatio~~n and arbitration ~~sessions~~ decisions.

Interrogatory No. 9. Set forth the number of licensed teachers newly employed by defendant assigned to elementary schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for each of the school years since 1957

Interrogatory No. 10. Set forth the number ~~etc.~~ of licensed teachers newly employed by defendant assigned to junior high schools with

(a) not fewer than 90% non-white pupils

(b) not fewer than 90% white pupils

for each of The school years since 1957

Interrogatory No. 11. Set forth the number of unlicensed teachers newly employed by defendant assigned to elementary schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for each of the school years since 1957

(b) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of any provisions of any collective bargaining agreements, or any exchanges of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendants employees. If so set forth minutes and memorandums etc. meetings and collective bargaining sessions.

(c) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of any provisions of any collective bargaining agreements, or any supplements, memorada understanding or any exchanges of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendant's employees. If so set forth grievance, mediation, combination and arbitration sessions.

Interrogatory No. 9. Set forth the number of licensed teachers newly employed by defendant assigned to elementary schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for the school years since 1957

Interrogatory No. 10. Set forth the number etc. of licensed teachers newly employed by defendant assigned to junior high schools with

(a) not fewer than 90% non-white pupils

(b) not fewer than 90% white pupils

Interrogatory No. 11. Set forth the number of unlicensed teachers newly employed by defendant assigned to elementary schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for the school years since 1957

Interrogatory No. 12. Set forth the number of unlicensed teachers newly employed by defendant assigned to junior high schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for each of the school years since 1957

Interrogatory No. 13. Set forth the number of licensed teachers teaching at elementary schools under jurisdiction of Defendant who applied for transfers to other schools under the jurisdiction of Defendant for each of the school years since 1957.

Interrogatory No. 14. Set for the number of licensed teachers teaching at junior high schools under jurisdiction of Defendant who applied for transfers to other schools under the jurisdiction of Defendant for each of the school years since 1957.

Interrogatory No. 15. Set forth the number of such applications which

(a) were granted

(b) were denied

(c) were not acted upon or were withdrawn

Interrogatory No. 16. Of such applications referred to in (13 ~~11.~~) above which were granted how many involved transfers from elementary schools with pupils not less than 90% non-white to schools having fewer than 90% non-white pupils in attendance

Interrogatory No. 17. Of such applications referred to in (14) above which were granted how many involved transfers from junior high schools with pupils not fewer ~~less~~ than 90% non-white to schools having fewer than 90% non-white pupils in attendance

Interrogatory No. 18. Set forth the location and identification of all elementary schools under the jurisdiction of Defendant in which the pupils are not ~~less~~ fewer than 90% white

Interrogatory No. 19. Set forth the location and identification of all junior high schools under the jurisdiction of Defendant in which the pupils are not less than 90% white

Interrogatory No. 20. Set forth the location and identification of all elementary schools under the jurisdiction of Defendant in which the pupils are not less than 90% non-white

Interrogatory No. 21. Set forth the location and identification of all ~~elementary~~ junior high schools under the jurisdiction of Defendant in which the pupils are not less than 90% non-white

Interrogatory No. 22. State the number of licensed and unlicensed teachers at each such school and ~~how many~~ ~~and how~~ in interrogatories ~~##~~ #20 and #21 setting forth in ~~each such category are white and how many are non-white.~~ The number of years of experience for such teachers at such schools

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Attorney for Plaintiff.

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~~Interrogatory No. 23~~ -

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

--x

REGINA MEYERS, et al, :

Plaintiffs, :

-against- :

BOARD OF EDUCATION OF THE CITY OF NEW YORK, :

Defendant. :

--x

SIR: PLEASE TAKE NOTICE THAT the deposition of the Defendant by BERNARD DONOVAN of the County of Kings, City and State of New York, Superintendant of Schools under the jurisdiction of said Defendant will be taken on behalf of the plaintiff upon certain interrogatories, of which a copy is herewith served upon you, and such cross-interrogatories as may be duly served herein, before SHELDON ENGLEHARDT, an attorney and Notary Public whose address is 165 West 46th Street, New York, N.Y.

Plaintiff's Attorney

Carl Rachlin
38 Park Row
New York, New York

TO: Hon. J. L. Rankin, esq.
Corporation Counsel
City of New York and
Attorney for Defendant
Municipal Building
N.Y., N.Y.

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

---x

REGINA MEYERS, et al, :

Plaintiffs, :

-against- :

BOARD OF EDUCATION OF THE CITY OF NEW YORK, :

Defendant.

---x

PROPOSED INTERROGATORIES

TO THE ABOVE NAMED DEFENDANT______________________:

You are hereby notified to answer under oath the interrogatories numbered from 1 to 21, inclusive, as shown below, within fifteen (15) days of the time service is made upon you, in accordance with Rule 33 of the Federal Rules of Civil Procedure.

Interrogatory No. 1. Set forth the number of teachers licensed and employed by defendant teaching in

(a) elementary schools under the jurisdiction of said DEFENDANT for the years 1957-58, 1958-59, 1959-60, 1960-61, 1961-62, 1962-63, 1963-64, 1964-65, 1965-66.

(b) elementary schools under the jurisdiction of said DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils are white

(c) elementary schools under the jurisdiction of aforesaid DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils therein are non-white

(d) Junior high schools under the jurisdiction of DEFENDANT for the aforesaid years

(e) Junior high schools under the jurisdiction of DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils are white

(f) Junior high schools under the jurisdiction DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils herein are non-white.

Interrogatory No. 2. Set forth the number of teachers unlicensed and employed by DEFENDANT for the same school years as referred to in (1) above teaching in

(a) elementary schools under the jurisdiction of said DEFENDANT for the years 1957-58, 1958-59, 1959-60, 1960-61, 1961-62, 1962-63, 1963-64, 1964-65, 1965-66.

(b) elementary schools under the jurisdiction of DEFENDANT aforesaid years in which no fewer than 90% of the pupils are white

(c) elementary schools under the jurisdiction of defendant for the aforesaid years in which no fewer than 90% of the pupils therein are non-white

(d) Junior high schools under the jurisdiction of DEFENDANT for the aforesaid years

(e) Junior high schools under the jurisdiction of DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils are white

(f) Junior high schools under the jurisdiction of DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils herein are non-white.

Interrogatory No. 3. Set forth the qualifications of DEFENDANT necessary for a person to obtain a license to teach in

(a) the elementary schools and

(b) the junior high schools

Under the jurisdiction of Defendant obtaining during school years, since 1957, indicating the changes and modifications in such qualifications and the year of such change or modification

Interrogatory No. 4. Set forth the qualifications of DEFENDANT necessary for a person to teach in

(a) the elementary schools

(b) the Junior high schools

Under the jurisdiction of DEFENDANT obtaining since 1957, indicating the changes and modifications in such qualifications any year of such change or modification

Interrogatory No. 5. Set forth the rules and regulations of DEFENDANT obtaining since 1957 concerning the right of a licensed teacher to transfer from one school to another under the jurisdiction of DEFENDANT.

Interrogatory No. 6. Set forth the rules and regulations of DEFENDANT obtaining since 1957 concerning the right of an unlicensed teacher to transfer from one school to another under the jurisdiction of DEFENDANT.

Interrogatory No. 7.

(a) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of ; any provisions of any collective bargaining agreements, or any supplements, memoranda of understanding or any exchanges of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendant's employees. If so set forth copies of each such agreement, supplement, memoranda or letter;

(b) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of any provisions of any collective bargaining agreements, or any exchanges of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendant's employees. If so set forth minutes and memorandas of such meetings and collective bargaining sessions.

(c) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of any provisions of any collective bargaining agreements, or any supplements, memoranda understanding or any exchanges of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendant's employees. If so set forth copies of grievances, mediation, recommendations and arbitration decisions.

Interrogatory No. 8. Set forth the number of licensed teachers newly employed by DEFENDANT assigned to elementary schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for each of the school years since 1957

Interrogatory No. 9. Set forth the number of licensed teachers newly employed by DEFENDANT assigned to junior high schools with

(a) not fewer than 90% non-white pupils

(b) not fewer than 90% white pupils

for each of the school years since 1957

Interrogatory No. 10. Set forth the number of unlicensed teachers newly employed by DEFENDANT assigned to elementary schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for each of the school years since 1957

Interrogatory No. 11. Set forth the number of unlicensed teachers newly employed by DEFENDANT assigned to junior high schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for each of the school years since 1957

Interrogatory No. 12. Set forth the number of licensed teachers teaching at elementary schools under jurisdiction of DEFENDANT who applied for transfer to other schools under the jurisdiction of DEFENDANT who applied for transfers to other schools under the jurisdiction of DEFENDANT for each of the school years since 1957.

Interrogatory No. 13. Set forth the number of licensed teachers teaching at junior high schools under jurisdiction of DEFENDANT who applied for transfers to other schools under the jurisdiction of DEFENDANT for each of the school years since 1957.

Interrogatory No. 14. Set forth the number of such application which

(a) were granted

(b) were denied

(c) were not acted upon or were withdrawn

Interrogatory No. 15. Of such applications referred to in (12.) above which were granted how many involved transfers from elementary schools with pupils not less than 90% non-white to schools having fewer than 90% non-white pupils in attendance

Interrogatory No. 16. Of such applications referred to in (13.) above which were granted how many involved transfers from junior high schools with pupils not fewer than 90% non-white to schools having fewer than 90% non-white pupils in attendance

Interrogatory No. 17. Set forth the location and identification of all elementary schoolsuunder the jurisdiction of DEFENDANT in which the pupils are not fewer than 90% white

Interrogatory No. 18. Set forth the location and identification of all junior high schools under the jurisdiction of DEFENDANT in which the pupils are not less than 90% white

Interrogatory No. 19. Set forth the location and identification of all elementary schools under the jurisdiction of DEFENDANT in which the pupils are not less than 90% non-white

Interrogatory No. 20. Set forth the location and identification of all schools under the jurisdiction of all schools under the jurisdiction of DEFENDANT in which the pupils are not less than 90% non-white.

Interrogatory No. 21. State the number of licensed and unlicensed teachers at each such school in interrogatories in #19 and #20 setting forth the number of years of experience for such teachers at such schools

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Attorney for Plaintiff

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Education
556/164

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

REGINA MYERS, et al.

Plaintiffs,

against

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Defendant.

- -x

Office of the
Corporation Counsel
Municipal Building
New York 7, N.Y.
Boroughe f Manhattan

Feb. 2, 1966

The Defendant, The Board of Education of the City of New York, may have 60 days time from date within which to answer or make any motion with respect to the complaint herein.

Attorney for Plaintiffs

Carl Rachlin, Esq.
Att for Pltff.
38 Park Row
NY

SO ORDERED:

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

--x

REGINA MEYERS, et al, :

Plaintiffs, :

-against- :

BOARD OF EDUCATION OF THE CITY OF NEW YORK, :

Defendant.

--x

INTERROGATORIES OF PLAINTIFFS

TO THE ABOVE NAMED DEFENDANT, by Bernard Donovan, Superintendant of Schools under the jurisdiction of Defendant.

You are hereby notified to answer under oath the interrogatories numbered from 1 to 21, inclusive, as shown below, within fifteen (15) days of the time service is made upon you, in accordance with Rule 33 of the Federal Rules of Civil Procedure.

Interrogatory No. 1. Set forth the number of teachers licensed and employed by defendant teaching in

(a) elementary schools under the jurisdiction of said DEFENDANT for the years 1957-58, 1958-59, 1959-60, 1960-61, 1961-62, 1962-63, 1963-64 1964-65, 1965-66.

(b) elementary schools under the jurisdiction of said DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils are white

(c) elementary schools under the jurisdiction of aforesaid DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils therein are non-white

(d) Junior high schools under the jurisdiction of DEFENDANT for the aforesaid years

(e) Junior high schools under the jurisdiction of DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils are white

(f) Junior high schools under the jurisdiction DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils herein are non-white.

Interrogatory No. 2. Set forth the number of teachers unlicensed and employed by DEFENDANT for the same school years as referred to in (1) above teaching in

(a) elementary schools under the jurisdiction of said DEFENDANT for the years 1957-58, 1958-59, 1959-60, 1960-61, 1961-62, 1962-63, 1963-64, 1964-65, 1965-66.

(b) elementary schools under the jurisdiction of DEFENDANT aforesaid years in which no fewer than 90% of the pupils are white

(c) elementary schools under the jurisdiction of defendant for the aforesaid years in which no fewer than 90% of the pupils therein are non-white

(d) Junior high schools under the jurisdiction of DEFENDANT for the aforesaid years

(e) Junior high schools under the jurisdiction of DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils are white

(f) Junior high schools under the jurisdiction of DEFENDANT for the aforesaid years in which no fewer than 90% of the pupils herein are non-white.

Interrogatory No. 3. Set forth the qualifications of DEFENDANT necessary for a person to obtain a license to teach in

(a) the elementary schools and

(b) the junior high schools

Under the jurisdiction of Defendant obtaining during school years, since 1957, indicating the changes and modifications in such qualifications and the year of such change or modification

Interrogatory No. 4. Set forth the qualifications of DEFENDANT necessary for a person to teach in

(a) the elementary schools

(b) the Junior high schools

Under the jurisdiction of DEFENDANT obtaining since 1957, indicating the changes and modifications in such qualifications any year of such change or modification

Interrogatory No. 5. Set forth the rules and regulations of DEFENDANT obtaining since 1957 concerning the right of a licensed teacher to transfer from one school to another under the jurisdiction of DEFENDANT.

Interrogatory No. 6. Set forth the rules and regulations of DEFENDANT obtaining since 1957 concerning the right of an unlicensed teacher to transfer from one school to another under the jurisdiction of DEFENDANT.

Interrogatory No. 7.

(a) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of ; any provisions of any collective bargaining agreements, or any supplements, memoranda of understanding or any exchanges of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendant's employees. If so set forth copies of each such agreement, supplement, memoranda or letter;

(b) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of any provisions of any collective bargaining agreements, or any exchanges of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendant's employees. If so set forth minutes and memorandas of such meetings and collective bargaining sessions.

(c) State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of any provisions of any collective bargaining agreements, or any supplements, memoranda understanding or any exchanges of correspondence, supplements, or modifications of any such agreements, between defendant and any labor unions, professional associations or any other organizations of defendant's employees. If so set forth copies of grievances, mediation, recommendations and arbitration decisions.

Interrogatory No. 8. Set forth the number of licensed teachers newly employed by DEFENDANT assigned to elementary schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for each of the school years since 1957

Interrogatory No. 9. Set forth the number of licensed teachers newly employed by DEFENDANT assigned to junior high schools with

(a) not fewer than 90% non-white pupils

(b) not fewer than 90% white pupils

for each of the school years since 1957

Interrogatory No. 10. Set forth the number of unlicensed teachers newly employed by DEFENDANT assigned to elementary schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for each of the school years since 1957

Interrogatory No. 11. Set forth the number of unlicensed teachers newly employed by DEFENDANT assigned to junior high schools with

(a) not fewer than 90% white pupils

(b) not fewer than 90% non-white pupils

for each of the school years since 1957

Interrogatory No. 12. Set forth the number of licensed teachers teaching at elementary schools under jurisdiction of DEFENDANT who applied for transfer to other schools under the jurisdiction of DEFENDANT who applied for transfers to other schools under the jurisdiction of DEFENDANT for each of the school years since 1957.

Interrogatory No. 13. Set forth the number of licensed teachers teaching at junior high schools under jurisdiction of DEFENDANT who applied for transfers to other schools under the jurisdiction of DEFENDANT for each of the school years since 1957.

Interrogatory No. 14. Set forth the number of such application which

(a) were granted

(b) were denied

(c) were not acted upon or were withdrawn

Interrogatory No. 15. Of such applications referred to in (12.) above which were granted how many involved transfers from elementary schools with pupils not less than 90% non-white to schools having fewer than 90% non-white pupils in attendance

Interrogatory No. 16. Of such applications referred to in (13.) above which were granted how many involved transfers from junior high schools with pupils not fewer than 90% non-white to schools having fewer than 90% non-white pupils in attendance

Interrogatory No. 17. Set forth the location and identification of all elementary schoolsuunder the jurisdiction of DEFENDANT in which the pupils are not fewer than 90% white

Interrogatory No. 18. Set forth the location and identification of all junior high schools under the jurisdiction of DEFENDANT in which the pupils are not less than 90% white

Interrogatory No. 19. Set forth the location and identification of all elementary schools under the jurisdiction of DEFENDANT in which the pupils are not less than 90% non-white

Interrogatory No. 20. Set forth the location and identification of all schools under the jurisdiction of all schools under the jurisdiction of DEFENDANT in which the pupils are not less than 90% non-white.

Interrogatory No. 21. State the number of licensed and unlicensed teachers at each such school in interrogatories in #19 and #20 setting forth the number of years of experience for such teachers at such schools

Dated, New York, N.Y 1966
May 25, 1966

Carl Rachlin

Attorney for Plaintiffs
Congress of Racial Equality
38 Park Row
New York, New York

TO: Hon. J.L. Rankin, Esq.
Corporation Counsel
City of New York and
Attorney for Defendant

MEMO ON THE BOARD OF EDUCATION'S FAILURE TO ANSWER THE INTERROGATORY IN MEYERS v. BOARD

The Board's failure to respond either by answer to the interrogatories or by objection to parts or to the whole might constitute a waiver of objections. Compulsion to answer or sanctions both under rule 37 are available, but must be undertaken carefully. Further the case might be expedited by first attempting non-judicial prodding of the Board.

1 CONSEQUENCES OF THEIR TARDINESS

The interrogatory was filed May 25. The Objections must be filed within 10 days after service of the interrogatories. Further, a special court rule in the S and EDNY provides that no objection will be heard unless the moving party has first conferred with his adversary in a good faith attempt to resolve the issue.

The answer must be served"on the party submitting the interrogatories within fifteen days after the service of the interrogatories unless the court on motion and notice and for good cause shown, enlarges or shortens the time."

The interrogatory was served and filed on May 25. If non-working days are counted in the 10 and 15 day limits, then both have elapsed. If only working days are counted then the time for objections has elapsed but the time for answer closes at the end of the working-day Thursday, June 16, assuming that the day of service is not counted, as implied in rule 33. Service probably means receipt but might be interpreted such that mailing the answer within 15 days is sufficient.

Objections not served within 10 days are too late. Further only answers to the interrogatories objected to are deferred by objection, and all others must be answered. If an extension is granted, the time for objections is also ectended. I found nothing in Barron and Holtzoff or the relevant cases on whether an extension granted after 10 days would revive the right to object but I guess that the people who argue permanent waiver have the stronger case. Thus, extension requested and granted after 10 days have elapsed should extend the time to answer but not allow tardy objections. Allowing revival of right to object would dissipate the force of the 10 day rule.

Note that no time limit on requests for extension is explicitly set in rule 33. It is logical to assume that the request for extension must be filed within 15 days but as explained later the courts would probably grant an extension requested later than 15 days. This question was never discussed in the cases I looked at. Extensions are liberally granted.

Unfortunately objections not served within 10 days may be entertained if the party can show "excusable negligence." I found no definitions or boundaries of excusable negligence, and it would be impossible to evaluate the chances of the school board succeeding in a claim of excusable negligence without carefully examining their excuse.

[redacted]

In summary, the school board has probably lost their right to object and will be required to answer all interrogatories unless they can show excusable negligence or if the right to object is revived by getting an extension, which might be obtainable even after fifteen days.

11 WHAT CAN WE DO

Answers to some of the interrogatories might demand a great deal of research and compilation. Cases hold that if records are available, interrogatories cannot be used to evade the burden of compiling data at your own expense. But when the matter is peculiarly within other party's knowledge, some research will be required. If the answer wasn't readily available some of the interrogatories might have presented very close questions had the objections been seasonably made.

Other grounds for objection could have been 1-the tardiness of the interrogatory itself, but this depends on whether a date had been set for trial or hearings. 2-Harrassment. 3-The matter was known, this depending on what was revealed in the Glazer report.

The fact that some interrogatories might have been objectionable is important in the operation of rule 37a. [redacted] Rule 37(a) states that upon refusal to answer a rule 33 interrogatory the proponent of the question may on like notice make like application for an order. If granted and if the court finds that the refusal was without justification, the party undergoing interrogation may be forced to pay expenses. But if the request is made without substantial justification then the examining party may be asked to pay expenses. It seems to me and Barron and Holtzoff that the substantial justification requirement provides occasion to test the propriety of the discovery sought. Our chances of being socked with expenses are minute since the Board failed entirely to respond and some of the interrogatories are clearly unobjectionable. Even if some are objectionable only the school board could know this, as we aren't privy to the statistics they have complied. They may be liable for our expenses.

The Board failed [illegible] completely to respond, and Barron and Holtzoff say 37 (d) is appropriate. Rule 37 sanctions (prison, that facts be taken as established, striking pleadings, default judgements) are available only after failure to comply ~~to~~ the order gained using 37 (a) and (d). Under 37 (d), failure must be wilful which implies knowin inexcusable failure. Unfortunately courts are slow to use 37 (d). Further none of the 37 (d) sanctions are applicable to our case, unless ~~as established~~ the court decides to take that the appointment and transfer of teachers is discrimanatory. This is unlikely. So, if the best we can expect is an order to answer, perhaps we had best proceed under 37 (a) where costs can be charged to the school board. Or perhaps we should move in the alternative thus preserving the unlikely chance that the court decides that discrimination was established by failure to answer.

If you agree that the possibilities of the court deciding that failure to respond established our contention that discrimination exists, then it might be advisable to contact the school board when time has expired and threaten them with a 37 (a) order. This would save us the trouble of writing a brief, appearing at a hearing, etc. But it might also stimulate the Board to ask for an extension along with objections and claims of excusable negligence. If we allow the school Board to first file, it might appear that they are acting in ~~a~~ good faith, whereas if we press claim under 37 (a) and (d) they might have more trouble proving excusable negligence. Its up to you.

Bee w-
Elaine
McCarthy
group

October 15, 1965

Mr. Walter B. Donovan
Superintendent of Schools
Board of Education
110 Livingston Street
Brooklyn, New York

RE: JOHN WATSON
1108 Findlay Avenue
Bronx, New York 10456
Public School 90

Dear Sir: (Mr. Raklin)

As a dedicated parent, on behalf of my son and all others of the "minority" group in P.S. 90, subjected to the dubious decisions of its Guidance Counselor, Miss Bloom, I appeal to you to employ your good offices to investigate her judgment and jurisdiction in the suspension and transfer of my son to a "600" school.

In my many encounters with Miss Bloom, she has been irrational and belligerent, unwilling to discuss my son's difficulties without misconstruing every statement to her satisfaction. John has been accused of many things that I, as his parent, do not believe he is capable of doing and no proof has been shown that he has been guilty of her many accusations.

I am fully cognizant of the fact that as a child, away from me, I cannot possibly attest to his behavior and do not place him on a pedestal out of reach of criticism. However, the extent of her accusation is unbelievable. I firmly contend that the basis of her suspension is poorly founded and that nothing more than racial bias is her reason. We are not the only Negro family that has fallen victim to her wrath (which can be substantiated by other mothers).

I am sure that you, as well as I, am aware of the purpose of a Guidance Counselor and, if her kind is the best that the city can afford the schools of New York, then all of our economically and socially oppressed children are doomed eternally. She blatantly reminds me that I am a member of the "minority" group and deserve no more than we get. As a Guidance Counselor, she is OBLIGED to delve into the semmingly disturbed child's background, week out the trouble and, if she is effective, succeed in getting to the core of his problem and further aide him to surmount his difficulties. IT IS NOT TO HAMPER OR RETARD HIS EDUCATION.

No reason was given for John's suspension in the Letter of Suspension but orally, I was informed that due to his scholastic retardedness, Miss Bloom felt it necessary to send him to a "600" school; a school for corrective behavior.

I am strongly objecting to this because schools of that nature are not going to encourage his possibly now dormant desire to learn, are inadequate in beneficial teaching faculty, having a discouraging and degrading atmosphere, leaving much to be desired. If this suspension is based on his scholastic ability, then he should not have been promoted. Were he a destructive, incorrigible child, ill-mannered and abusive, as is the criteria for such a school, then I would be inclined to agree with her judgment. Such is not the case, as can be proven by his many friends and neighbors.

To illustrate her methods in building a case against John, as she stated, I shall cite numerous occasions where her decisions, statements and judgment stand to be corrected:

Miss Bloom stated that my son's reading ability was below par. This I am aware of and inquired of her as to where he could get professional assistance. Miss Bloom showed me a sheet of paper, stating that "we do not get enough money to carry out such a program" and suggested one that required a fee. Being a family of eight, my husband having a below-average paying job with no other income, anyone can readily understand that I am not financially able to obtain such services.

Miss Bloom has repeatedly suggested that I apply for public assistance and I am aware that I do need supplementary aide but I have tried to manage in order to avoid the degrading feeling that Welfare has one undergo to be eligible. While we may be deprived of the luxuries on a monetary standpoint, my children were never deprived of the love, understanding and guidance of both parents.

Miss Bloom has made many accusations regarding my children and my self which were uncalled for. She has even gone so far as to state that since the Guidance Coordinator was away and her return was indefinite, I had no proof that these accusations were not true. Acting upon this statement, I inquired of the principal if there were anything she had to say on my son's behalf and she informed me that "Miss Bloom runs the school". Now I ask, just what kind of school could this be?

On Miss Bloom's request, I took my son, Donald, to a psychologist. He was then attending P.S. 90 but she succeeded in having him transferred to another school because I did not contest it. However, at the hospital, it was learned that nothing was psychologically wrong with Donald and that through other complaints about Miss Bloom, upon speaking with her they have found her to be irrational and uncommunicative.

Miss Bloom has stated that numerous registered and unregistered letters have been sent to my attention, requesting that I come to school for an interview regarding John's behavior. I have received ONE letter re an interview. The next letter, which was registered and the ONLY one, was the Letter of Suspension.

Miss Bloom demanded that my husband come see her to discuss the situation. Explaining that his type of work leaves him little to no time to do this, I naturally would be the one to attend to these matters. At her insistance, Mr. Watson did visit her office. What words were exchanged between them evidently left her evasive of him and from that pointed insisted that I not "Mention anything to Mr. Watson". He, as any other father, is naturally interested in his children's welfare, behavior and education and his laxity in not seeing her does not in any way reflect disinterest on his part.

I intend to exhaust every method possible to avoid sending my son to this type of school, exposing him to the extremely sordid side of life before he is even given a fair chance just on the whims of an obstinate, prejudiced Guidance Counselor.

Yours very truly,

Ella Watson

(Mrs.) Ella Watson

cc: Mr Racklin
~~Mrs. Shelton~~ - CORE
NAACP
P.S. 90 Principal -

P.S. Since speaking to Miss Shelton I have recieved the suspence hearing of my son which is Friday, Oct 22nd 1965

December 14, 1965

Dr. Kenneth Clark
139 th Convent Ave.
City College, New York
New York, New York

Dear Dr. Clark,

As I discussed on the phone with you yesterday we hope to file a complaint on teacher assignment for New York city very soon. This has been prepa~~r~~red. And we were glad to read of your suggestion in the Herald Tribune.

We have been specially concerned about school problems. I send you copies of two letters to Core Chapter in Utica, which develop a new approach to northern school problems. May I have your suggestions on this.

As you perhaps know Utica CORE has had great success using a technique of going to court and fighting the issuance of bonds for segregated schools.

As soon as any complaints is ready we will be in touch.

Sincerely,

CR/si

Carl Rachlin
General Counsel

December 23, 1965

Paul Chevigny, Esq.
c/o HANA
200 W. 135th Street
Rm. 114
New York, New York

Dear Paul:

Time is, to a substantial degree, of the essence. The sooner a complaint can be drafted and served, the better. I suggest that you read *In re Skipwith*,and Kenneth Clark's article in the Sunday *Herald Tribune* of December 12, 1965.

See you soon.

Cordially,

SMN/cs

STEPHEN M. NAGLER

COPY COPY

new file
Mc & BoE

BOARD OF EDUCATION
City of New York
110 Livingston Street
Brooklyn, N.Y. 11201

Bernard E. Donovan
Superintendent of Schools

December 28, 1965

Miss Ina Elnora McCarther
1066 St. Nicholas Avenue
New York, New York

Dear Miss McCarther:

The transfer notice you received came from the office of the Deputy Superintendent in charge of Personnel and was sent in the normal, routine manner. It was made upon the recommendation of Assistant Superintendent Friedman who felt that, since there had been prior personality difficulties with the principal, it would be in your best interest to effect the transfer. Superintendent Friedman believes you will be much happier and thus will be able to teach more effectively in JHS 149, Bronx.

Very truly yours,

s/ B. E. Donovan

Bernard E. Donovan
Superintendent of Schools

BED:cm

1066 St. Nicholas Avenue
New York, N. Y. 10032

January 3, 1966

Dr. Bernard E. Donovan
Superintendent of Schools
Board of Education
City of New York
110 Livingston Street
Brooklyn, New York 11201

Dear Dr. Donovan:

Thank you for responding to my letter to you of December 8, 1965.

Since the transfer to JHS 149 from JHS 38 Bronx, referred to in your letter of December 28, was requested by Assistant Superintendent Friedman, I cannot understand why I was told by his office on December 6th when I called that they had no notification of such a transfer and knew nothing about it.

The aspect of this whole case which I find demeaning and patronizing is the complete lack of consideration for me as an individual. Decisions are constantly being made, in arriving at which my opinion is never sought nor my wishes considered; and when I ask questions I am met with evasions, half-truths, or no answer at all. It should not have been necessary for me to write to you, the Superintendent of Schools, to ascertain the source of an unsigned and apparently unauthorized transfer notice.

Without any hearing, or consultation, Dr. Friedman has decided I "will be much happier and thus will be able to teach more effectively in JHS 149 Bronx." As a teacher and an individual, I feel I have the right to say - first, that I would not be happier at JHS 149, since I am familiar with their facilities and arrangements and know them to be inferior to those at JHS 38; and second, I have not allowed my teaching, despite the difficulties I have experienced, to suffer.

I respectfully submit, therefore, that I do not wish to transfer to JHS 149.

Apparently, I am the one selected to make the sacrifices in this unfortunate situation which arose, according to Mr. Friedman, through "personality difficulties with the principal."

In front of witnesses, the principal, Leonard F. Littwin, has stated to my teaching colleagues at JHS 38, that he would "have me out of the City system before the end of the year. . .." and ". . . that he and Superintendent Friedman are the best of friends;" and Mr. Friedman, in front of witnesses has stated that although he was to act as "peacemaker" in this situation, it was one that preceded his administration in the district and he would prefer not to become involved. Mr. Friedman also mentioned his long years of personal friendship with Mr. Littwin. He further stated before witnesses that he realized they must "save face" for the Principal in whatever decision was reached.

I respectfully submit that the "face-saving" should not be at my expense, and the suggested transfer penalizes only me in this situation.

Respectfully,

Ina Elnora McCarther

Ina Elnora McCarther

cc: Senator Jacob K. Javits
Senator Robert F. Kennedy
Congressman James Scheur, Att. Mrs. Babette Jones

Bronx Borough President Herman Badillo
Manhattan Borough President Constance V. Motley
Mr. James Smith, Assistant to Mayor John V. Lindsay

Mr. Frederick Jones, Chairman, State Education Comm., NAACP
Mr. Watts, New York NAACP
Miss Franklin, National NAACP
Mr. A. J. Allen, New York Urban League
Mr. Racklin, CORE
Mr. A. Shanker, UFT

Mr. Bernard Friedman
Mr. Leonard F. Littwin

[illegible]

COORDINATING COUNCIL ON EDUCATION FOR THE DISADVANTAGED
134 WEST 51ST STREET, NEW YORK, N.Y. 10019, ROOM 241
581-2717

BENJAMIN F. McLAURIN
CHAIRMAN

JAN 28 1966

January 26, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N.Y.

Dear Carl:

Congratulations on the wonderful work in the preparation of Civil Rights Action File Number 69. And, than you very much for sending us a copy.

Will there be need for "friends of the court"? Our Administrative Committee will be meeting on February 3rd, does that still give us time? I discussed it with Ben McLaurin, and if you want us, please call.

If, you have any extra copies or can zerox a few more, please send them on.

Sincerely,

Marie

(Mrs.) Marie Duke
Assistant to the Chairman

MD:css

M E M O R A N D U M

JAN 27 1966

January 26, 1966

TO: Carl Rachlin

FROM: Marvin Rich MR

RE: Meyer vs. the Board of Education

Last week I asked you to give me a copy of the complaint in Meyer vs. the Board of Education. I did not receive it. Yesterday I asked both Charlaine Shelto and Steve Nagler for a copy of the complaint and told them both it was extremely important. I've not yet received it.

It is important that I receive this complaint immediately. Further, it is important that reasonable requests such as these be fulfilled promptly. There is no excuse for this failure. Your office is frequently uncovered because of late arrivals, therefore, it seems reasonable that a staff member could spend five minutes bringing over an essential document.

Further, I think it only good practice that I receive copies of these complaints, motions, and briefs when they are filed. This would obviate this kind of difficulty in the future.

MR/hm

cc: Steve Nagler
Charlaine Shelto

Reply to Marv
You are absolutely right about
receiving copies of everything
We will make sure of this. Charlaine
always [illegible] that you were [illegible]
the first to receive a copy. [illegible]
it got [illegible] laid on your
[illegible] In any event
you will receive
copies of everything
CR

MEMORANDUM

TO: Messrs. Schiffer, Chevigny, Karpatkin

FROM: Carl Rachlin

February 1, 1966

SUBJECT: Myers, et. al v. Board of Education

Enclosed are the proposed interrogatories for the above-named case. I would most appreciate, as rapidly as you can, your amendments, corrections, additions, and deletions.

In addition, we have just received word that the corporation counsel wants a 60-day extension on the time to answer. My immediate reaction was to say "no". I never gave the City of Monroe 60 days and I do not know why I should give the City of New York 60 days for a stall. But, if I am being pigheaded, please let me know.

CR/os
Enc.

MEMORANDUM

TO: MARVIN RICH

FROM: Carl Rachlin   February 1, 1966

RE: Myer vs. Board of Education

You are absolutely right about receiving copies of everything. We will make sure of this. Charlaine advises me that you were amongst the first to receive a copy. Perhaps it got mislaid in your office. In any event you will receive copies of everything.

February 3, 1966

Jack Greenberg, Esq.
NAACP Legal Defense Fund, Inc.
10 Columbus Circle
New York, New York

Dear Jack:

Enclosed is a copy of the complaint in Myers v. Board of Education, the school suit which we recently filed against the New York City Board of Education.

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs
Enc.

copies to: Chad Polier, NAACP
Hilda Siff, HEW
Attorneys of Record

Myers

February 4, 1966

Mrs. Roena Rand
Chairman,
District of Columbia Core
128 Florida Avenue, N. W.
Washington, D. C.

Dear Roena:

Please let me have your thoughts about a school case in D. C., referred to in Alsop's column in the Herald Tribune, 1/24/66. We want to help.

With best regards,

Sincerely,

CARL RACHLIN
Legal Director

CR/cs

2-11-66

~~Meyer~~

Rachlin

421 Dogwood Street
Park Forest, Illinois 60466

February 8, 1966

Mr. Marvin Rich
CORE Scholarship, Education & Defense Fund
38 Park Row
New York, New York 10038

Dear Mr. Rich:

It has come to my attention that CORE is instituting a suit against the New York Board of Education. The suit, as I understand it, charges that the schools in the Negro ghettos of New York City are below the standards of of the rest of the City. I have argued in the enclosed paper that schools in poorer localities receive lower levels of support than schools in wealthier localities. Perhaps the paper will be of some help to you. I am in the process of conducting further research on this subject. I would be very interested in hearing how you plan to proceed in your suit. If I can be of any service, please do not hesitate to get in touch with me. I wish you the best of fortune.

Sincerely,

Arthur E. Wise

Arthur E. Wise

school cases

GEORGE D. CONSTANTIKES
ATTORNEY AT LAW
256 EAST STATE STREET
WESTPORT, CONNECTICUT

COLONIAL GREEN

227-9579
227-9570

February 10, 1966

FEB 11 1966

Carl Rachlin, Esq.
General Counsel
CORE
38 Park Row
New York, New York

Dear Mr. Rachlin:

In the capacity as general counsel for the Norwalk Chapter of CORE, we have been informed by the chairman that you have commenced a suit against the New York City Board of Education re integration of schools.

The chairman of the Norwalk Chapter has requested that we get in touch with you to find out what the basis of this suit is, with a view toward the possibility of commencing a similar suit against the Board of Education of Norwalk.

We would appreciate any help you can give us on this matter. Thank you very much.

Very truly yours,

Steve Fine
Stephen L. Fine

SLF:tgv

~~Dear~~ Carl - I haven't been back to Mississippi since we breakfasted together at Steven's in 1964, but have taken on the job as counsel for Norwalk's CORE — so, am still keeping a hand in things. Next time you're up this way, give a call. Best regards.

George

a national organization with affiliated local groups working

CONGRESS OF
CORE
RACIAL EQUALITY

to abolish racial discrimination by direct, nonviolent methods

38 PARK ROW
NEW YORK 38, NEW YORK
COrtlandt 7-6270

James Farmer
national director
Dr. George A. Wiley
associate national director
ADVISORY COMMITTEE
Ralph Abernathy
James Baldwin
Roger N. Baldwin
Katrina M. Barnes
Algernon D. Black
James B. Carey
Allan Knight Chalmers
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John Cogley
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Eugene E. Frazier
Harold Gibbons
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Sidney Hollander
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James McCain
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Richard Haley
southern regional director
Carl Rachlin, Esq.
general counsel
Alan Gartner
fund raising director
James Peck
CORElator editor

February 15, 1966

Hon. J. Lee Rankin
Corporation Counsel
City of New York
Municipal Building
New York, New York

RE: Myers, et. al. v. Board of Education

Dear Mr. Rankin:

The other day I received in the mail a form letter asking for an extension of time to answer the above case. This important matter involves thousands upon thousands of school children, apparently being treated, by someone in your office, as an accident on the corner of 60th and Broadway. I am bringing this to you attention because knowing your interest in the subject matter, you will realize its importance. I cannot grant an extension for 60 days as the form letter asks. In fact, I hope that your office would have called me to work out a consent decree which would ameliorate the admittedly difficult problem about which the Board of Education has been concerned a long time. I am at your disposal to work out arrangements in this area.

If you are interested in submitting a joint plan for the solution of this problem, we are at your service, as to where and when to meet and discuss the issue further.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

NOTE: This letter was not forwarded, as the reply from the Board of Education was received February 15, 1966.

12

February 15, 1966

Stephen L. Fine, Esq.
256 East State Street
Westport, Connecticut

Deat Steve:

Enclosed is a copy of our complaint in the New York City de jure school case. The theory of the action is that in the Black schools the teachers assigned to the schools are inferior in comparison to teachers assigned to the white schools. We have planned to have this type of action in other areas besides teachers, but we thought we would adopt a new approach; a narrow sharp jab at the Board of Education, albeit a very important one.

Please keep in touch,and obviously, if we can in any way help, let us know.

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs
Enc.

Meyer

NOTE:

TO: Carl Rachlin

FROM: Charlaine February 16, 1966

Per your instructions, I have sent a copy of the school complaint to David Finkel. Enclosed please find five copies of the complaint, plus one copy of the Board of Educations' answer. Should I send a copy of the answer to the attorneys of record?

March 3, 1966

Mr. Arthur E. Wise
421 Dogwood Street
Park Forest, Illinois 60466

Dear Mr. Wise:

Thank you for your letter to Marvin Rich. We are planning further cases like the New York City case in other areas of the United States, and hope to begin them in an improved fashion in several Western cities. Perhaps you would care to help us in the legal and factual research.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

Meyers
v
Bd
Ed

[redacted]

SUFFOLK COUNTY
DEPARTMENT OF [redacted]
[redacted] ECONOMIC OPPORTUNITY
1 Old Indian Head Road, Commack, N. Y.

Area Code 516
543-6666
[redacted]

APR 26 1966

April 25, 1966

Mr. Carl Rachlin
CORE
38 Park Row
New York, New York

Dear Carl:

I don't know if you saw this issue of the late Herald Tribune.

It looks like the school department is providing the evidence for our de facto suit.

Sincerely,

Alan Gartner
Executive Director

AG/mfo
Enclosure

New York Times January 17, 1965

Myers et. al v. Board of Education

How to Staff the Ghetto Schools?

By FRED M. HECHINGER

The Scholarship, Education and Defense Fund of the Congress of Racial Equality last week opened a new chapter in the battle to assure Negro pupils of equal educational rights. It initiated legal action in Federal District Court in Manhattan against the Board of Education — not on grounds of de facto segregation but on a charge of substandard teaching in predominantly Negro schools.

The fund, entering its suit on behalf of nine mothers whose children attend elementary and junior high schools in Negro ghetto areas, charged that the board "knowingly and willfully" assigned more inexperienced and unlicensed teachers to schools in such areas than it does to schools "attended entirely or predominantly by white children." It asked that the procedure be declared illegal and unconstitutional, that the board be enjoined from continuing this practice and required to present a new plan for the assignment of teachers.

The case is interesting on a number of counts.

It will probably be relatively easy to show that the facts on school staffing, as charged by the fund, are essentially true. A 151-page study of the city schools, prepared under the auspices of the Russell Sage Foundation ("Pupils and Schools in New York City," by Eleanor B. Sheldon and Raymond A. Glazier), published last year, documented exactly what the complaint is about. It showed that fewer than one-fourth of predominantly Negro elementary schools had the regular complement of fully licensed teachers, while over two-thirds of the predominantly white schools were staffed with the full quota of regulars. In the junior high schools the figures were even more damning.

While it will be easy to prove that the board has knowingly permitted this to happen, it may be hard to make a case that it did so willfully. The dilemma is caused by procedures rather than prejudice. Regular, experienced teachers with sufficient seniority may request transfers to existing vacancies in other schools. Thus, the exodus from the "difficult" schools, a frequently used term for schools in slum areas, must be offset with assignments of new teachers — and this usually means inexperienced ones who do not yet have the right to request specific assignments.

The board is not only aware of this dilemma; it tried to do something about it. Last April, in new policy proposals, it hinted at forced teacher assignments or rotation.

The United Federation of Teachers, which is the bargaining agent for the entire teaching staff, said at once: "Under no conditions will the U.F.T. allow the teachers to be forcefully transferred or rotated. If necessary, the schools will be closed." A year earlier, the U.F.T. had also blocked a board proposal to offer special salary differentials for teachers in low-socio-economic neighborhoods.

Meanwhile, a committee of experts, including the president of the U.F.T., is studying this issue, along with others on the integration front, but has not yet reported to the Superintendent of Schools.

Given this background, it is quite possible that the Board of Education may be grateful to the CORE fund for taking the matter to court. The board may actually be happy to lose its case. It could then presumably take the kind of action it wanted to take earlier.

There are far more basic questions involved than a legal case, lost or won.

Should teachers be assigned to schools in which they do not want to teach? If they are assigned, will they do a satisfactory job or are they likely to do more harm than good? Is it a bribe — and therefore professionally unethical — to offer extra pay?

Simple answers are misleading. The solutions are more likely to be found in the admission that all teachers are not alike and that they are not interchangeable parts in an organizational machine.

Some teachers are, by ability, commitment and personality, more suitable than others to the teaching of deprived children. Special training surely can help to bring out specific aptitudes. This has been demonstrated in any number of pilot projects, though it has never been put into mass practice.

Able supervision by a good principal and sufficient latitude in the use of unconventional methods and equipment can help enormously. So can radically different staffing —more teachers, more nonprofessional assistants, fleible schedules and a host of other devices.

The issue also underlines the importance of President Johnson's proposal for a National Teacher Corps, to be used in disadvantaged areas at the local schools' discretion. Congress passed the Corps but has not yet given it funds.

As for special pay — either in actual dollars or in terms of lighter teaching hours — the assumption that this constitutes a bribe denies that it is right and proper to reward extra effort in either a more difficult or a more important task. Yet, it would be hard to deny that, in today's big cities, the education of disadvantaged children is both more difficult and more important to the urban future than the education of those who come to school with the advantages of affluence.

Does the New York legal action imply that the civil rights groups are moving toward acceptance of the "separate but equal" doctrine in de facto segregation in the North, after it has been declared unconstitutional in the de jure segregation of the South?

Obviously not. But the Negro parents are demanding that, whether the schools are predominantly white or Negro or integrated, a Negro child's education must not be unequal in quality. And the level of teacher experience is certainly an important, measurable factor of quality.

From: Office of CARL RACHLIN

June 30, 1966

RE: MEYERS V. BOARD OF EDUCATION

I had a talk this morning with Mr. Kaufman of the New York Corporation Counsel's Office. He told me that they were having a lot of time consumed in collecting all the information we asked for in our interrogatories and requested until July 30th to have them ready. He said it might take that long. He promised, however, that he would not wait until July 30th if he had them before that. He gave me his oral assurance on that.

cc: Marvin Karpatkin

SLUM SCHOOL SPECIALTY: INEXPERIENCED TEACHERS

By Joseph Michalak

Of The Herald Tribune Staff

At PS 151, in the Bushwick section of Brooklyn, fewer than one of every four teachers has more than three years of experience. The school's enrollment is largely Negro and Puerto Rican. At JHS 145, in the East Bronx, fewer than one of every three teachers has that much experience, and two-thirds of the teachers are substitutes. That school's enrollment, too, is largely Negro and Puerto Rican.

On the other hand, there are three schools in the Bayside and Fresh Meadows sections of Queens—PS 179, 188, and 205—where all the teachers have more than three years of work behind them. At PS 188 and PS 208, there is no teacher with less than six years' experience, and every teacher has a regular license. The enrollment at those schools is almost all white.

Statistics such as these on the first experience index of the 52,000 teachers in the New York City public schools were revealed yesterday along with the announcement of a program ostensibly designed to put more regularly licensed and experienced teachers into slum schools.

School Superintendent Bernard Donovan said the personnel division will "saturate" the less-privileged schools with new regular teachers "to reduce the unsatisfactory teaching conditions arising from the prevalence of inexperienced substitutes and rapid teacher turnover . . . before scattering appointments over less needy schools."

Another of the measures proposed by Dr. Donovan will call for the transfer of the "great majority" of the 4,004 elementary-school specialists in such areas as art, reading, music and science back into regular classrooms.

These teachers, designated as OTPs, generally the most experienced in the system, are now used for work with individuals or in covering the classroom periods during which regular teachers do their preparation.

Mr. Donovan also said there would be "intensified assistance" for 7,000 new teachers to be added to the public school staff in September, and the planning, with possible Federal assistance, of mandated courses in human relations for all teachers. Of the 7,000 new teachers, the board hopes to recruit 3,000 through a crash training program for liberal arts graduates to be conducted this summer at the City University.

The recruits, Dr. Donovan said, would receive on-the-job orientation and guidance from experienced teachers and supervisors. As recommended by a special committee on improving teaching in the city, new teachers will not be assigned to the most difficult classes, and lesson plans will be prepared by the supervisors for the first week or two.

EXHIBIT "A"

TABLE 26. Percentage Distribution of Elementary Schools by Proportion of Teachers on Permanent License by Ethnic Composition: New York City, 1962–1963

	Per Cent of Teachers on Permanent License				
Ethnic Composition	65 and over	50–64	35–49	Less than 35	Total (N = 556)
X	8	23	36	60	22
Y	24	12	2	5	15
Z	68	65	62	35	63
Total	100	100	100	100	100
X	19	35	27	19	100
Y	72	24	2	2	100
Z	50	31	15	4	100
Total	47	31	15	7	100

EXHIBIT "B"

TABLE 33. Percentage Distribution of Elementary School Personnel Index by Ethnic Composition: New York City, 1963–1964

	Personnel Index[a]		
Ethnic Composition	Below City Average	At or Above City Average	Total (N = 569)
X	35	15	22
Y	5	22	15
Z	60	63	63
Total	100	100	100
X	60	40	100
Y	14	86	100
Z	38	62	100
Total	39	61	100

[a] Proportion of authorized positions filled by regularly licensed teachers.

EXHIBIT " C "

TABLE 44. Percentage Distribution of Junior High Schools by Proportion of Teachers on Permanent License by Ethnic Composition: New York City, 1963–1964

	Per Cent of Teachers on Permanent License				
Ethnic Composition	65 and over	50–64	35–49	Less than 35	Total
X	0	14	38	43	22
Y	68	20	13	0	25
Z	32	66	49	57	53
Total	100	100	100	100	100
X	0	25	64	11	100
Y	52	30	18	0	100
Z	12	48	34	6	100
Total	19	40	36	5	100

New York World Telegram
and The Sun
D. 373,849 SAT. 142,176

DEC 28 1965

Rights Panel To File Suit

Galamison Hits Building Plans

The Rev. Milton A. Galamison's Parents' Workshop in Brooklyn, which last year sponsored demonstrations in the streets for civil rights, today announced it was taking its case to the courts.

Some 100 members of the workshop will file suit in State Supreme Court to enjoin the Board of Education from building "$100 million worth of segregated schools in New York City," a spokesman for the group said. The parents are also asking, in another suit, that the state cut off funds that would be used to construct these schools.

"We know that de facto segregation of public schools is unconstitutional," said Galamison. "These two suits will give our courts and State Education Commissioner James E. Allen an historic opportunity to show that they know it, too."

The spokesman said the suits would be filed by attorney John Silverberg, the civil rights lawyer, "as soon as possible in January."

He said that the parents were particularly anxious to halt construction of two intermediate schools scheduled to be built in 1966-67 in Brooklyn's Brownsville section.

Still another suit is being contemplated by CORE. It has announced that it plans to bring action against the Board of Education alleging that Negro children get "separate and unequal" education.

NEW YORK
Herald Tribune
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The Herald Tribune makes available a broad cross section of informed and responsible opinion through the views and observations of our columnists. Our own opinions are expressed in these editorials.
20 Monday, January 24, 1966

Matter of Fact

Some Very Good News

By Joseph Alsop

WASHINGTON.

A lawsuit against the New York Board of Education by the Congress of Racial Equality may seem an unlikely cause for loud, prolonged cheers. But this suit is in fact a brilliant glimmer of light on what had been a very dark horizon. It deserves to be saluted as such.

The suit, brought by CORE's scholarship, education and defense fund, charges the Board of Education with discrimination, but not because the schools in the Negro ghettos of New York are de facto segregated. The suit charges, quite simply, that these schools are shockingly substandard.

The main point made is that the schools in the ghettos have far fewer experienced and fully licensed teachers than the schools in middle class neighborhoods. To this, the Board of Education can make no possible answer, except that its policies have been dictated by long-accepted rules about teacher-transfers, plus the rigid attitude of the United Federation of Teachers.

In virtually every American school system, teachers with seniority have the privilege of transferring to vacant places in schools that they prefer. Not very creditably, perhaps, teachers with adequate seniority almost invariably ask for transfer from the "difficult" schools as soon as a suitable vacancy occurs. In New York, the Board of Education has even made a dim gesture towards reform, but without success.

The cause for rejoicing about the CORE suit, however, is something even bigger, indeed a lot bigger, than the simple hope that teacher-quality in the ghetto schools may be improved. It is a new thing in the civil rights movement, and it could be the beginning of a major turning point.

It is best to be blunt. With many honorable exceptions, and with much encouragement from self-flagellating white mush-heads, the civil rights movement has been tending towards emotional self-indulgence of a kind very dangerous to the Negro cause.

For every courageous, patient and far-seeing Roy Wilkins, the movement has lately seemed to have at least two demagogues loudly denouncing "co-operation with the white power structure" —which is a recipe for naked racism and also ignores the fact that nine-tenths of the American population are white.

Another aspect of this self-indulgence has been a reluctance to face facts. Any fool can see that it will take a generation or more to break up the vast Negro ghettos in the Northern cities. Any fool can see that as long as the ghettos endure and as long as parents—including the very large majority of Negro parents—prefer to send their children to neighborhood schools, there is going to be a very considerable measure of de facto segregation.

Obviously, everything ought to be done that can possibly be done about this, by school-pairing, by drawing district lines in a sound way, by the "school parks" that Mayor John Lindsay has in mind. But until the ghettos disappear, everything that can possibly be done will not "end de facto segregation!" which has been the only civil rights battle cry thus far.

Nonetheless, when this reporter went to Boston to look into the shocking school situation there, the Negro leaders were downright angered by the suggestion that pressure should also be started for improvement of the ghetto schools. "Are you," they asked indignantly, "saying we ought to accept 'separate but equal' schools?"

Yet the refusal to press for better schools in the ghettos is simply a decision to condemn yet another generation of Negro children to inferior education and therefore to inferior opportunity. With real courage, this crucial fact has now been faced by the director of CORE's scholarship, education and defense fund, Marvin Rich, and by the other CORE leaders as well.

Here in Washington, Mrs. Roena Rand, the local CORE chairman, is thinking about a parallel approach to her much more difficult problem—for in Washington, the primary schools are now 90 per cent Negro. Her comparison must be with the suburban or quasi-suburban schools, which raises many other issues. CORE suits of the New York type are also under consideration in a good many other cities.

With this new trend in the civil rights movement, one may perhaps hope that someone in a position of high governmental authority will come right out with the correct answer to the "separate but equal" argument. The correct answer is "separate as long as the ghettos cannot be broken up—with fully supported open enrollment, of course. But unequal, above all, unequal!"

For the fact is that even if CORE wins its suit, the resulting school improvement will be wholly inadequate. Schools in deprived neighborhoods need three times the investment that is required by schools in more fortunate neighborhoods. They need not equal but much better teachers, a much better pupil-teacher ratio, much better buildings, better playgrounds, much better everything. That is the only way to open the doors for the next generation out of the poverty-environment, which has now become a vast and cruel human trap.

178 Florida Ave. N.W.
copy to
Rich

Mrs Roena Rand
chairman
District of Columbia CORE
Dear Roena
Please let me have your
thoughts about a school
case in D.C. referred
to Alsop column
1/24/66 I
want to help
in any regard
Marv

Carl;
What cooks?
Can we help on
this?

N.Y. Times
Sun, 2/13/66

Education

Toward Better Teaching in Slums

By FRED M. HECHINGER

Schools in big city slums have long been beset by the dilemma of needing the services of the most experienced teachers and actually being staffed by the least experienced ones. Last week, a special committee appointed by the Superintendent of Schools, turned in an extensive report on the problem.

On the committee were leaders of civic and educational organizations, education experts, the president of the United Federation of Teachers and an education expert of the National Association for the Advancement of Colored People.

By way of preface, the committee said it had rejected the two most controversial past proposals —forced rotation of teachers and special salary benefits for teachers in the slum schools.

Both of these approaches had earlier been considered by the Board of Education. Both had run into violent opposition by the United Federation of Teachers, with a direct threat that the union would close the schools if any such steps were to be taken.

Having eliminated those controversial proposals, the committee proposed an important change in the overall approach to teacher training and placement for all the schools, based on plans submitted by Dr. Harry Rivlin, dean of Teacher Education at the City University of New York and one of the country's leading authorities on urban education.

Training Programs

Future teachers would, in their senior year in college, be appointed as assistant teachers in public schools. They would be under close supervision of a highly qualified teacher. They would also continue their collegiate liberal education and would, in seminars and other courses, bolster their initial classroom experience with professional study.

After one year as an assistant teacher and after college graduation, the novice would be appointed as a "beginning teacher," with somewhat curtailed duties, depending on his readiness. Simultaneously, he would pursue graduate work in education. His university instructors would be available to help if necessary in the school itself.

After anywhere from six months to a year and a half as a beginning teacher, the recruit will move into what is in effect a two year period of probation and observation, while on a full teaching assignment and while continuing the kind of graduate training most useful to his career at that point.

While these proposals unquestionably promise to improve teacher training in general, it remains to be demonstrated that they address themselves to the problem of the slum schools. Yet, this is the cutting edge of urban school reform. It is also the issue in a pending suit, brought by the Scholarship, Education and Defense Fund against the Board of Education. It charges that the ghetto schools are staffed with the least experienced teachers.

What are the specific points on which the report might be questioned?

The objection to "forced rotation" or, at any rate, involuntary assignment is easiest to justify. In any intellectual enterprise, which cannot be measured in terms of piece work, unwilling service is self-defeating. In such delicate situations as the ghetto schools, it could be fatal.

The objection to differential pay is more difficult to sustain. The committee rejected it because "such a procedure would serve to create an unhealthy and unfair image of schools and pupils in disadvantaged areas regardless of their positive efforts and programs."

This has the earmarks of talking in circles. If it were not for the present difficulties—whether in terms of image or of fact—experienced teachers could be attracted to these schools. Privately every professional educator agrees that, without any aspersion on the children in the ghetto, teaching in such schools is more demanding.

Professionals in other fields, from medicine to engineering, are often given extra consideration—either in terms of more money or shorter hours on the job or extra help, etc.—for more difficult assignments. Only in teaching (though not on the college and university level) the fiction is maintained that every teacher's job is like that of any other teacher with the same seniority.

But the potentially most controversial—because most conservative—aspect of the committee report is that it wants to shield the new teachers from the most difficult schools.

"The first assignment of a newly appointed teacher should be one in which the difficulties to be faced are not such that the teacher is defeated before she starts," the report said.

This makes sense for the first assignment of new, fully trained teachers, especially under present inadequate training procedures. But in Dr. Rivlin's carefully supervised, on-the-job training, with the backing of the college faculty, the most important potential ingredient ought to be that future teachers can be groomed for service in difficult schools.

If all teachers are launched in favored, middle-class neighborhoods, in order to prevent the initial shock, any later move to a slum school will either find them unprepared or leave them with a feeling that they are being sent to Siberia.

The committee, of course, reflects the nationwide concept of teacher education—that the schools are a monolithic entity, calling for the same set of qualities and the same rewards for all practitioners.

The view that young teachers must be protected against the shock of difficult assignments, lest they be defeated, stands in direct contrast to the theory of the Peace Corps which seeks young people for often shockingly difficult assignments.

This does not mean that the Peace Corps selection criteria, in personality and training, ought to be adopted for all teachers. It could mean that special tasks may require certain personalities and training procedures from the start.

Dr. Rivlin had this in mind, but his concern with training for the slum schools seems to have been lost on the committee. The Committee's recommendations to improve teacher training are beyond reproach, but the assumption that, if the training of all teachers is upgraded, it will be enough to wait for it to spill over into the slum schools, is open to question.

Q

PROPOSED INTERROGATORIES IN MEYERS V. Bd. of Education

~~test changes and~~ ~~[illegible]~~ ~~pupils [illegible] groups~~

1. Set forth the number of teachers licenced + employed by defendant ~~or by~~ teaching in

(a) ~~two~~ elementary schools under the jurisdiction of said defendant for the years 1957-58, 1958-59, 1959-60, 1960-61, 1961-62, 1962-3, 1963-4, 1964-5, 1965-6

(b) elementary schools under ~~under~~ the jurisdiction of defendant ~~DEFT~~ for the aforesaid years in which ~~whit~~ no fewer than 90% of the pupils are white

(c) elementary schools under the jurisdiction of DEFT for the aforesaid years in which no fewer than 90% of the pupils therein are non-white

(d) Junior high schools under the jurisdiction of DEFT for the aforesaid years

(e) Junior high schools under the jurisdiction of DEFT for the aforesaid years in which no fewer than 90% of the pupils are white

(f) Junior high schools under the jurisdiction of DEFT for the aforesaid years in which no fewer than 90% of the pupils therein are non-white.

③ Set forth the number of teachers unlicensed and employed by DEFT for the same school years as referred to in (2r) above teaching in

(a)
(b)
(c)
(d)
(e)
(f)

Same (,) as in above

(43.) Set forth the qualifications ~~of as determined by~~ of DEFT necessary ~~to~~ for a person to obtain a license to teach in (a) the elementary schools and (b) the junior high schools under ~~the junior high sc~~ the jurisdiction of DEFT obtaining during school years since 1957, indicating the changes and modifications in such qualifications and the year of such change or modification

⑤ Set forth the qualifications of DEFT necessary for a person to teach in (a) the elementary schools (b) the junior high schools under the jurisdiction of DEFT obtaining since 1957, indicating the changes and modifications in such qualifications any year of such change or modification

⑥ Set forth the rules and regulations of defendant obtaining since 1957 concerning the right of a licensed teacher to transfer from one school to another under the jurisdiction of DEFT

⑦ Set forth the rules and regulations of DEFT obtaining since 1957 concerning the right of an unlicensed teacher to transfer from one school to another under the jurisdiction of DEFT.

⑧ insert

⑨ Set forth the number of ~~newly employed~~ licensed teachers newly employed by deft assigned to elementary schools with
(a) not fewer than 90% white pupils
(b) not fewer than 90% non-white pupils
for the school years since 1957

⑩ Set forth the number etc. (same as ⑨ except ~~to be~~ ~~of~~ substitute "junior high" for "elementary"

⑪ Set forth the number of unlicensed teachers newly employed

by DEFT assigned to elementary schools with (a) not fewer than 90% white pupils (b) not fewer than 90% non-white pupils
for the school years since 1957

(12) "Same as "9" for junior high schools"

(13) Set forth the number of ~~teachers~~ licensed teachers teaching at elementary schools under jurisdiction of DEFT who applied for transfers to other schools under the jurisdiction of DEFT for each of the school years since 1957.

(14) ~~Same for junior high~~
Substitute "junior high" for "elementary"

(15) Set forth, the number of such applications which ~~we~~ (a) were granted (b) ~~which~~ were denied.
~~(et of those~~

(16) Of such applications ~~granted~~ referred to in (11) above which were granted how many ~~were from~~ involved transfers from elementary schools with pupils not less than 90% non-white to schools

~~other than those with pupils~~
~~not less than 90% non-white~~
having fewer than 90% non-white pupils in attendance

(17) (Same as "14" except substitute "junior high" for "elementary")

(18) Set forth the location and identification of all elementary schools under the jurisdiction of DEFT in which the pupils are not less than 90% white

(19) [same for jr. high as "16"]

(20) Set forth the location and identification of all elementary schools under the jurisdiction of DEFT in which the pupils are not less than 90% ~~white~~ non-white

(21) [same for jr highs as "18")

(22) State the number of licensed and ~~licensed~~ unlicensed teachers at each such school and how many in each such category are white and how many are non-white.

Insert

8 ~~6~~(A)

State whether or not rights to transfer on the part of licensed or unlicensed teachers or other personnel are, or have been at any time since 1957, the subjects of any provisions of any collective bargaining agreements, or any supplements, memoranda of understanding or exchanges of correspondence, supplements, or modifications of any such agreements, between Δ and any labor unions, professional associations or any other organizations of Δ's employees. If so set forth copies of each such agreement, supplement, memoranda, letter or r wr. t. bn writing

minutes & memos etc
(B) Ditto for meetings & col bgng
sessions

(C) Ditto for grievance mediation
conciliation & arbitration sessions

storical Society of Wisconsin

Please Retain Original Order

NATIONAL ASSOCIATION FOR THE : C. P. NO. 2
ADVANCEMENT OF COLORED PEOPLE
and :
SAFEWAY TRAILS, INC.
:
Plaintiffs
:
v. DECEMBER TERM, 1964
:
CONGRESS OF RACIAL EQUALITY, INC.
and :
JAMES O. WILLIAMS NO. 1576
and :
JOHN BRYANT, JR.
and :
JOY BROWN
:
Defendants : IN EQUITY

BRIEF FOR DEFENDANTS IN SUPPORT OF MOTION TO DISSOLVE PRELIMINARY INJUNCTION

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Philadelphia, Pennsylvania 19102

Gilbert M. Cantor
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Philadelphia, Pennsylvania 19102

Attorneys for Defendants

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NATIONAL ASSOCIATION FOR THE : C. P. NO. 2
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v. DECEMBER TERM, 1964
:
CONGRESS OF RACIAL EQUALITY, INC. :
and
JAMES O. WILLIAMS :
and NO. 1576
JOHN BRYANT, JR. :
and
JOY BROWN :
Defendants : IN EQUITY

DOCKET ENTRIES

Jan.4, 65	Complaint in Equity for Injunction No Real Estate Filed.
Jan.7, 65	Motion of N.A.A.C.P. as party pltf to withdraw filed
EoDie	Motion approved, Alessandroni, P.J.
Jan.7, 65	Pltf (Safeway Trails Inc.) affidavit of service filed
Jan.8, 65	Ordered that a preliminary injunction issue upon security being entered by pltf in the sum of $500.00 until final Hearing,
Eodie	Order entered Alessandroni, P.J.
Jan.8, 65	Injunction bond filed in sum of $500 filing Fidelity & Deposit Co. of Maryland Surety Surety approved by Court.
Jan.20,65	Defendants Motion to Dissolve Preliminary Injunction filed.

BRIEF FOR DEFENDANTS IN SUPPORT OF MOTION TO DISSOLVE PRELIMINARY INJUNCTION

I. HISTORY OF THE CASE

This action in equity was brought by the National Association for the Advancement of Colored People and Safeway Trails, Inc. against Congress of Racial Equality, Inc., a New York corporation, and three individuals alleged to be its agents, servants and employees.*

Plaintiffs sought an injunction to prevent "the assembly of unruly persons", "hindering or molesting passengers and others", and "the stoppage and interference with buses" at 13th and Arch Streets, Philadelphia.

A Complaint and Rule for Preliminary Injunction were filed January 4, 1965 and served January 5. The Rule was returnable on January 7 before the Honorable Eugene V. Alessandroni, P. J.

---

*There was no testimony to connect any of the defendants with the picketing complained of. In fact, the picketing was conducted by Philadelphia CORE, an unincorporated association, with which the individual defendants are connected. Neither Philadelphia CORE, nor any of the individual defendants is an agent, servant or employee of the New York corporation. Plaintiffs have sued, and the Court has enjoined, the wrong organization.

At the January 7 hearing, NAACP withdrew as a plaintiff. Safeway Trails, Inc. (sometimes referred to as "Trailways" and sometimes as "plaintiff" in the remainder of this brief) then presented two witnesses in support of its application for a preliminary injunction.

The hearing was adjourned to January 8, 1965. On that day no testimony was taken. Defendants were not then reresented by counsel. After hearing argument by counsel for plaintiff and counsel for the withdrawn plaintiff, the Court entered a preliminary injunction in the form requested by plaintiff.

On January 15, 1965, the undersigned attorneys entered their appearance for defendants. At a meeting held in chambers that day with counsel for plaintiff and defendants, Judge Alessandroni ordered that the entire matter be argued on January 22, 1965. In His Honor's presence, counsel for plaintiff and defendants agreed that pending the disposition of the matter, defendants would voluntarily restrict their picketing to no more than twelve persons at any one time.

At the January 15 meeting of counsel with Judge Alessandroni, counsel for defendants argued that the preliminary injunction should not have been issued. In order to crystallize that contention as the main issue for argument on January 22, 1965, and in the interest of orderly procedure, counsel for defendants on January 20, 1965, filed a motion to dissolve the preliminary injunction.

II. FACTS

The only evidence presented at the preliminary injunction hearing, and upon which the injunction was granted, was the testimony of two witnesses.

One of the two witnesses testified with respect to the picketing. That witness was Carl William Weithoff. He was identified as an employee of plaintiff, without specification of the capacity in which he is employed.

Mr. Weithoff testified that on December 31, 1964, at approximately 6:30 P.M., some pickets appeared at plaintiff's terminal with signs that said "Join CORE--Trailways is unfair" (N.T. 13). He testified that nine pickets marched in a circle in front of the terminal's main entrance on 13th Street. As a result, he said, passengers "had problems carrying their luggage through the pickets into the terminal" (N.T. 14). Leaflets were also distributed.

There was no testimony as to how long the picketing lasted. There was no assertion that the pickets were unruly. There was no indication that they hindered or molested passengers or that any passengers failed to get into the terminal or onto the buses. There is not a word about interference with buses. Counsel for plaintiff conceded that defendants' activity was peaceful (N.T. 4).

The other witness, was Cecil B. Moore, President of The Philadelphia Branch of NAACP. Omitting the bombast and vituperation, his testimony may be briefly summarized:

Before NAACP became involved with Trailways, Moore explained, CORE was trying to integrate the line and put an end to discrimination by Trailways in the hiring of its employees. (N.T. 18,21) NAACP decided that its Philadelphia branch would replace CORE and in December of 1963 NAACP engaged in unlawful blocking of buses, an activity which Judge Kelley enjoined (N.T. 18,21,28).

Moore testified that NAACP then entered into negotiations with Trailways, apparently resulting in some sort of agreement which was never reduced to writing or made part of the record in the injunction action against NAACP (N.T. 28).

In order "to compensate for the long years of discrimination" (N.T. 22), Trailways agreed to hire sixteen Negro drivers, "some clerks" and "some other employees" (N.T. 22). Trailways also agreed to hire "some workers in Washington and New York City, because we didn't have any." (N.T. 24).

Moore testified that "our subsequent investigation" revealed that sixteen Negroes had been hired as drivers (N.T. 24), although some had been fired and some had resigned (N.T. 25). Further agreement with Trailways: "as to the next sixteen drivers,...there would be thirteen Negroes and three white drivers" (N.T. 26). There was no testimony whether Trailways fulfilled its promise to hire the other employees, or that Moore knew whether the company did or not.

These transactions are considered by Moore to be an "agreement" which the NAACP will protect against "any attempt of any other organization representing any Negroes to interfere ... including any Government Agency or any local Municipality" (N.T. 25).

Moore, who is not a part of the Trailways organization, testified that in his "opinion", Trailways is not discriminating at the present time (N.T. 20). No one connected with Trailways and familiar with its hiring and promotion policies and practices so testified.

III. QUESTIONS PRESENTED

A. Is peaceful picketing to protest racial discrimination enjoinable?

B. Is plaintiff entitled to a preliminary injunction where it has no clear legal right to prevail ultimately and where it has shown no loss or harm whatsoever and no urgent necessity for immediate relief?

IV. ARGUMENT

A. PEACEFUL PICKETING OF PLAINTIFF BY DEFENDANTS IS AN EXERCISE OF FREEDOM OF EXPRESSION WHICH IS PROTECTED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND ARTICLE 1, SECTION 7, OF THE PENNSYLVANIA CONSTITUTION.

This case involves one instance of peaceful picketing protesting racial discrimination by a company which has been guilty - as its own testimony shows - of "long years of discrimination" (N.T. 22).

There is no competent testimony that the discrimination has stopped. The agreement to hire thirteen Negroes for the next sixteen driver vacancies indicates that the discrimination or its effects are continuing. There is no indication of any progress with respect to employees other than drivers.

The foregoing picture emerges from the testimony of plaintiff itself. After long years of discrimination by plaintiff, with no conduct of defendants beyond peaceful picketing, and with no evidence of harm or injury whatsoever to plaintiff, plaintiff claims it is entitled to injunctive relief.*

---

*In its complaint and during most of the hearing on preliminary injunction, plaintiff did not contend that it was entitled to an injunction against peaceful picketing. As will be seen below, the Court granted all that plaintiff requested, namely, an injunction against certain specific acts of violence. However, plaintiff has made allusions to a ban on all picketing and it is against this possible contention that this section of our ARGUMENT is directed.

Under the Constitution, fortunately for the cause of integration, the rights on which defendants' stand are not so wire-thin. Indeed, the clarion pronouncements of the Supreme Court of the United States leave no room for doubt that especially in the cause of racial integration, picketing, demonstrations, and other peaceful means of expression will be afforded the highest measure of Constitutional protection and interference therewith will not be tolerated. See Edwards v.s. Carolina, 372 U. S. 229, 83 S. Ct. 680 (1963); Cox v. Louisiana, Sup. Ct. Jan. 18, 1965.

There is, moreover, no problem of reconciling Federal law and State law on this issue, or choosing between them. The law of this Commonwealth, stated in 1621, Inc. v. Wilson, 402 Pa. 94, 104-5 (1960), correctly summarizes the Federal law and follows it:

> "Since the decision in Thornhill v. Alabama, 310 U.S. 88, 60 S. Ct. 736 (1940), wherein peaceful picketing was equated with other means of expression and accorded the same constitutional protection as free speech, the United States Supreme Court has evolved a doctrine whereby a state may, consistent with the Federal Constitution, enjoin picketing which in a particular case has an objective which violates a legitimate clearly-defined law or public policy of the state. A state may not, however, constitutionally equate picketing itself with coercion or with a violation of state policy". (Emphasis supplied).

In Westinghouse Electric Corp. v. United Electrical, Radio & Machine Workers, et al., 353 Pa., 446, 457 (1946), the

Court clearly stated,

> "The right of picketing, when free from coercion, intimidation and violence, is a right constitutionally guaranteed as one of free speech".

Cases involving unlawful objectives are distinguished from ours in the mere recital of them. For example, picketing designed to compel a violation of State anti-trust law, Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 93 L.ed.987 (1950); to establish a union shop in violation of state policy, International Brotherhood of Teamsters C.W. & H. v. Hanke, 339 U.S. 470, 94 L.ed.995 (1950).

In this Commonwealth, unlawful objectives were found, and injunctions, therefore, approved, for example, in Grimaldi v. Local No. 9, Journeyman Barbers, etc., et al., 397 Pa.1, 153A.2d 214 (1959), cert. denied, 361 U.S. 901 (1959): To compel a barber who had no employees to join a union.

In contrast with the United States and Pennsylvania Supreme Court cases cited in the preceding two paragraphs, none of the testimony adduced in this case points to any objective of defendants which violates any "clearly-defined law or public policy of the state." The objective is to induce plaintiff to adopt what are known as fair employment practices and which are now prescribed by federal, state and local law. The only "harms" alleged are (1) possible loss of business to plaintiff and (2) upsetting of "the harmony existing" between plaintiff and the NAACP. (see paragraph 7 of Complaint). Neither has been proved. Neither, if proved, would justify an injunction against peaceful picketing.

There is no evidence in the case that a single customer of plaintiff has been lost as a result of the picketing. In any event, loss of business is a possible concomitant of all peaceful picketing, and it has never been held to justify abridgement of the right. 1621, Inc. involved loss of business through persuasion of passersby (pp 98, 107-8) and this was held not to render the objective unlawful.

As to the alleged danger to the harmony of plaintiff and NAACP, three things should be said. (1) If anything, one can only infer from NAACP's participation in this case, first as a party and then as a witness, that the harmony in question can only have been strengthened. (2) The harmony of a particular business with the NAACP, depending on the circumstances, may or may not be an interest which is of value to the community; certainly, there is no "clearly defined law or public policy of the state" which protects it against peaceful picketing by CORE or any other person or group. (3) Most important, neither the NAACP nor any other organization, private or public, "owns" the civil rights movement or the fair employment branch of it, nor does NAACP have the right or authority to approve or license, and thereby insulate against criticism, a company's employment practices according to the Association's standards or impulses.

In 1621, Inc., supra certain individuals and organizations failed before the liquor board and in the Courts to prevent the location of a taproom at a certain location. Nevertheless their right to picket the taproom was held to be guaranteed by the due process clause of the Federal Constitution and Article 1, §9 of the Pennsylvania Constitution.

The Supreme Court held that it was a lawful objective

> "to convince passersby, by means of persuasion, not to patronize the establishment so that in time its operation would become uneconomical and appellant would therefore transfer the liquor license to another location, or, failing in that, to persuade the appellant to so police his patrons that the most blatant of the evils complained of would cease or that the peacefulness and good character of the neighborhood would not be destroyed." 402 Pa. 107-8.

If the State Liquor Control Board's approval of the transfer of the liquor license to the premises being picketed did not insulte *1621, Inc.* against picketing to make it move or improve, *how can NAACP's approval of plaintiff's employment practices insulate plaintiff against CORE's picketing to improve those practices?*

There is lacking in this case, as in *1621, Inc.*, "the *union picket line*, which, because of union rules, is particularly effective in convincing members, their families and affiliates not to cross the line and enter the premises." (p 102). In our case, as in *1621,Inc.* we have *picketing, without coercion, for a lawful purpose*. Under these circumstances, the interest of this Nation and of this Commonwealth in freedom of expression has been held to outweigh the inconvenience or possible loss to the plaintiff.

As the Court in _1621, Inc_. pointed out, in footnotes 6 in pages 104-105, _Thornhill, supra_, and the companion case of _Carlson v. California_, 310 U.S. 106, 84 L.ed.1105 (1940),

> "completely altered the law of picketing...Tort doctrine regarded picketing as illegal unless justified; free speech doctrine considers restraints upon picketing unconstitutional unless justified. The burden of proof rests, since _Thornhill_, on those who seek to limit picketing."

This is a case of free speech for a lawful purpose. The remedy in such a case, if plaintiff should need one, is for plaintiff either to persuade CORE to stop picketing or to persuade the public to ignore CORE's pickets, - _not for the Court to stop the discussion_.

B. PLAINTIFF HAS FAILED UTTERLY TO SHOW A CLEAR AND URGENT NEED FOR ITS PRELIMINARY INJUNCTION.

It should be recognized in the first place, that the Order entered January 8, 1965, did not enjoin peaceful picketing by defendants. The Order, conforming to the prayer of the Complaint, is directed against "assembling unruly persons", "hindering or molesting passengers and others, etc.", and "stopping and interfering with the movement of buses." Peaceful picketing does not involve unruly persons. It does not hinder or molest anybody. It does not interfere with the movement of buses.

The word "picketing" appears nowhere in the plaintiff's prayer for relief or in the Court's Order. Had the Court intended to enjoin picketing, it would have said so. An order forbidding "picketing and all other demonstrations" would have covered peaceful picketing as well as the other types of conduct so carefully spelled out in the Order. It is respectfully submitted that the Court did not enjoin peaceful picketing in this case because peaceful picketing for a lawful purpose is Constitutionally protected.

The scope of the injunction being clear, it should be equally clear that there was no evidence of a factual basis for it in the conduct of the defendants.

The Court enjoined "the assembly of unruly persons". None of the testimony indicated that the defendants were, or had brought to the premises, any unruly persons.

The Court enjoined "stopping and interfering with the movement of buses, etc." Not a word of the testimony alludes to any such interference.

The Court enjoined "hindering or molesting passengers and others, etc." Only one sentence of testimony could possibly relate to this. Carl William Weithoff testified that "passengers had problems carrying their luggage through the pickets into the terminal". (N.T. 14) That sentence leaves open these questions:

How many passengers had "problems"? Two? More than two?

Were the passengers distracted by the pickets or were the "problems" physical?

Were there any more "problems" than are presented by the normal flow of pedestrian traffic?

Did the "problems" last for a second, a few seconds, or any more substantial period? Apparently the "problems" were overcome: There is no testimony that anyone failed to get into the terminal or missed a bus or complained.

We contend that that single sentence of testimony is too vague and wanting in information to be accorded any weight at all. Further, even reading a factual episode into it, which is a work of imagination or fiction, it is too slim a reed on which to hang a sweeping injunction against "unruly persons", "hindering or molesting passengers", and "stopping and interfering with the movement of buses".

Even counsel for plaintiff drew back from the contention that the evidence showed a factual basis for the injunction. At page 32 of the Notes of Testimony we read:

> "The Court: What have they done to cause any difficulty at all, with the proper discharge of the functions of Trailways?

> "Mr. Naulty: They have blocked the entrance - it is not what they have done in the past, but what might happen in the future as to civil strife. The past is merely an indication of what may happen." (Emphasis supplied.)

There was not a shred of evidence of any violence or probable violence. When questioned by the Court as to violence, plaintiff's counsel frankly conceded, "There was none on this occasion. We do not know whether there will be in the future". (N.T. 4. Emphasis supplied.) Nor was there a scintilla of evidence of any loss to plaintiff whether irreparable or not.

Under these circumstances, the law is clear that plaintiff is not entitled to a preliminary injunction. This is a drastic remedy which is given only in the case of urgent necessity to avoid injury which cannot be compensated by damages. It should not be issued unless the rights of the plaintiff are absolutely clear and it should not be issued unless greater injury will be done by refusing it than by granting it. Herr v. Rumisek, 303 Pa. 9 (1931); Herman v. Dixon, 393 Pa. 33 (1958); 18 P.L.E. 383.

The evil of the injunction, if not based on evidence of bad conduct by defendants, is that it sets up, without provocation or cause, just for these defendants, a special open-end system of punishments, i.e., for contempt, where the proofs which may be brought against defendants can easily involve mistakes as to identity and faulty observation, and would probably involve subjective interpretations by hostile parties. In case there should be an instance of disorderly conduct or other offense, defendants would face the possibility of punishment under the criminal laws, but there is no reason why the punitive hazards should be multiplied against the defendants in this case, who have indulged only in peaceful picketing in accordance with the rules and customs of the great civil rights movement of which they are a part.

It has been held that the issuance of a preliminary injunction should be denied where there is mere apprehension on the part of the plaintiff, rather than a threat of imminent injury. Hey v. Springfield Water Co., 207 Pa. 38 (1903). See Pennsylvania Law Encyclopedia, Injunction, Sec. 104. There is nothing in plaintiff's case but the satisfaction of the NAACP, which is irrelevant, and the groundless apprehensions of plaintiff, which are insufficient to warrant injunctive relief. There is nothing more to this case than a single incident of peaceful picketing.

V. CONCLUSION

For the reasons stated above, defendants urge the Court to grant their motion to dissolve the preliminary injunction.

Respectfully submitted,

Burton Caine
12th Floor Packard Building
Philadelphia, Pennsylvania 19102

Gilbert M. Cantor
1300 Two Penn Center Plaza
Philadelphia, Pennsylvania 19102

Dated: January 22, 1965

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE : C.P. NO. 2

and

SAFEWAY TRAILS, INC.
Plaintiffs

vs. : DECEMBER TERM, 1964

CONGRESS OF RACIAL EQUALITY, INC.

and
JAMES O. WILLIAMS
and
JOHN BRYANT, JR.
and
JOY BROWN
[redacted]

Defendants : No. 1576

ORDER

AND NOW, this day of , 196_ , upon consideration of the Complaint, it is ordered and decreed that a preliminary injunction issue upon security being entered by the plaintiff in the sum of $.

Upon the entry of said security the defendants named above are enjoined and restrained from:

(a) assembling unruly persons on the premises of 13 and Arch Streets, Philadelphia, Pa., and the ways immediately adjoining.

(b) hindering or molesting passengers and others lawfully on said premises and the adjacent ways thereto.

(c) stopping and interfering with the movement of buses on premises of 13th and Arch Streets, Philadelphia, Pa., and elsewhere in the immediate vicinity thereof.

Plaintiffs motion to continue the Preliminary Injunction will be heard by the Court on the_____day of____________ 196_, at ________, in Room _____, City Hall, Philadelphia, Pa.

____
J.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and SAFEWAY TRAILS, INC. Plaintiffs	C. P. NO. 2
vs.	
CONGRESS OF RACIAL EQUALITY, INC., a New York Corporation and JAMES O. WILLIAMS and JOHN BRYANT, JR. and JOY BROWN, Defendants	DECEMBER TERM, 1964 NO. 1576

RULE TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE

AND NOW, this 4th day of January, 1965, upon motion of John F. Naulty and Isaiah W. Crippins, attorneys for plaintiffs, a rule is issued upon defendants to show cause why a Preliminary Injunction should not be granted.

Rule Returnable Thursday ~~Wednesday~~, January 7th, 1965, at 2:00 P.M ~~10:00 A.M.~~, in Room 636, City Hall, Philadelphia, Pa.

s/ Alessandroni
J.

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
260 S. 15th Street
Philadelphia, Pa.

: C. P. NO.

and

SAFEWAY TRAILS, INC.
13th and Arch Streets
Philadelphia, Pa.

PLAINTIFFS

vs.

: DECEMBER TERM,
1964

CONGRESS OF RACIAL EQUALITY, INC.
A New York Corporation
2229 N. Broad Street
Philadelphia, Pa.
and
JAMES O. WILLIAMS
1617 Brown Street
Philadelphia, Pa.
and
JOHN BRYANT, JR.
5543 Matthews Street
Philadelphia, Pa.
and
JOY BROWN
2229 N. Broad Street
Philadelphia, Pa.
[redacted]

: NO.

DEFENDANTS

COMPLAINT FOR PRELIMIMARY INJUNCTION

1. The plaintiff, Safeway Trails, Inc., is a corporation engaged in interstate commerce under authority granted by the Interstate Commerce Commission for the transport of passengers.

2. The plaintiff, National Association for the Advancement of Colored People, is a corporation doing business in Philadelphia at 260 S. 15th Street, Philadelphia, Pa.

3. The defendant, Congress of Racial Equality, Inc., also known as CORE is a New York Corporation doing business in Philadelphia at 2229 North Broad Street.

4. The defendants, Williams, Bryant, Brown, and Branche, are agents, servants, and employees of the defendant CORE.

5. Litigation existed between plaintiffs as of the record in C. P. No. 2, Dec. Term 1963, No. 875:

6. Plaintiffs have negotiated for the integration of the Safeway Trails, Inc. and both plaintiffs have resolved any differences which might have existed between them in good faith.

7. The defendants and each of them have conspired to upset the harmony existing between plaintiffs.

8. On December 28, 1964, the defendant, by its agents, notified the plaintiff by letter attached hereto and marked Exhibit "A: that it intended to conduct demonstrations on plaintiff's premises.

9. On December 31, 1964, the defendant by its agents, servants, and employees assembled a mob upon the premises of the plaintiff to interfere with its business.

10. On the said date the defendant through its agents, servants, and employees menaced, threatened and obstructed the movement of passengers and others persons having legitimate business on said property.

11. The defendant corporation, by its agents, servants, and employees have previously caused disturbances in New York City and Washington, D. C. against the property of the defendant and its personnel.

12. The defendants placed agents, servants, and employees in front of the Terminal of the plaintiff and have obstructed the ingress and egress of buses engaged in interstate commerce.

13. The defendants have obstructed the ingress and egress of passengers engaged in interstate commerce.

14. The defendants have attempted by written material and oral threats to coerce and intimidate passengers from riding the buses of plaintiff, Safeway Trails, Inc. and to cause physical intimidation to said passengers.

15. The defendants, their officers, servants, and employees have no contracts or other arrangement with the business of plaintiff.

16. The defendant corporation by its agents, servants, and employees has threatened and continues to threaten plaintiff with further breaches of the peace and interference with its legitimate business pursuits.

17. Plaintiff has no adequate remedy at law to redress the wrongs which have been done and which are further threatened by the defendant corporation.

18. Plaintiff avers that if a preliminary objection is not issued, its trade and business has sustained irreparable harm and damage and will continue to sustain said damage unless a preliminary injunction is issued.

WHEREFORE, plaintiff requests that an injunction be issued:

(a) to prevent the assemblage of unruly persons on the premises 13th and Arch Streets and the adjacent ways.

(b) to prevent hindering or molestation of passengers and others lawfully on the above premises and the adjacent ways.

(c) to prevent the stoppage and interference with buses on said premises and off said premises.

(d) for such further relief as the Court may adjudge.

Respectfully submitted,

John F Naulty
JOHN F. NAULTY
Attorney for Plaintiff
Safeway Trails, Inc.

ISAIAH W. CRIPPINS
Attorney for Plaintiff
N. A. A. C. P.

COMMONWEALTH OF PENNSYLVANIA:
SS:
COUNTY OF PHILADELPHIA :

CHARLES A. LANGNER, being duly sworn according to law, deposes and says that he is the General Manager - Northern Division of Safeway Trails, Inc., the plaintiff herein; that he is authorized to make this affidavit on behalf of said corporation; and that the facts contained herein are true and correct to the best of his knowledge, information, and belief.

Charles A. Langner
CHARLES A. LANGNER

SWORN TO AND SUBSCRIBED:
Before me this 31st day:
of December, 1964.
Miriam J Garvin
Notary Public
My Commission Expires: Jan 4, 1965

COMMONWEALTH OF PENNSYLVANIA:
SS:
COUNTY OF PHILADELPHIA :

Cecil B. Moore , being duly sworn according to law, deposes and says that he is

President, Philadelphia Branch, National Association for the Advancement of Colored People

the plaintiff herein; that he is authorized to make this affidavit on behalf of said corporation; and that the facts contained herein are true and correct to the best of his knowledge, information, and belief.

Cecil B. Moore

SWORN TO AND SUBSCRIBED:

Before me this 31st day of December A.D. 1963

William J. Garvin
Notary Public

My Commission Expires: Jan 4, 1965

RACIAL EQUALITY

PHILADELPHIA CORE

2229 N. BROAD ST.
PHILADELPHIA 32, PA.
ZIP CODE 19132
POplar 5-2229
AREA CODE 215

James O. Williams
CHAIRMAN

John Bryant Jr.
VICE-CHAIRMAN

Joy Brown
SECRETARY

Doris M. Taylor
TREASURER

EXECUTIVE
MEMBERS AT LARGE
Arthur Alston
Stanley Diamond
Benjamin Jones
Iris Jones
Joseph Smith

DEC 29 1964

December 28,1964

Manager
Safeway Trails
13th and Arch Streets
Philadelphia, Penna.

Dear Sir:

Philadelphia CORE addressed an inquiry to you on December 21,1964 concerning the local makeup of your staff on a racial basis. CORE also stated quite clearly that we wanted a statement from you on your progress in complying with the agreement reached with the Philadelphia branch of the NAACP. A similar letter was addressed to the president of that group.

You may not deem it necessary to divulge this information to CORE, or the holiday may have caused a delay in responding. I have no way to determine the correct answers except by my own thinking.

I may have failed to indicate the urgency of responding to my request or given you a deadline. CORE now wishes to give you a clearer picture on both these points.

First, our deadline for reply is Wednesday, December 30,1964. Second, if any Negroes are employed in your terminal in positions of ticket agents, mechanics, bus drivers, information or reservation clerks, we request the names and addresses of those employees.

Failure to comply with both these requests will leave Philadelphia CORE no alternative but to conduct demonstrations and use whatever form of direct, non-violent action as may be practical.

Respectfully yours,

James O. Williams

James O. Williams
Chairman,
Philadelphia CORE

JOW:ac

EXHIBIT 'A'

n,

the copy of the letter
for by phone this
25 September-

e the matter is quite

SEP 28 1964

[illegible]

(E) Trailways

September 24, 1964

Mr. Louis N. Zimmerman
City Commissioner of Human Rights
80 Lafayette Street
New York, N. Y.

RE: Safeway - Trails, Inc.

Gentlemen:

Our representative, Mr. Rowland Watts, is currently out of town. He is expected to return on Monday, September 28th. We would like to request a meeting with you as soon as possible.

We are most alarmed at the flagrant violation by Safeway - Trails, Inc. of the commitment made before your committee.

Information at hand indicates that three employees, Noel Quinones, Willie Thornton, and Nathaniel Royal have been served with termination of employment notices effective October 4, 1964.

We also understand that Safeway - Trails, Inc. has recently hired five information clerks. To discharge these employees at a time whem they are hiring other employees is a blatant violation of their commitment.

We would also alert you to the fact that these gentlemen have families and that their sole means of support is their current employment which will terminate next week.

We understand that CORE will likewise participate in the meeting.

Thank you,

Rachelle Horowitz
Administrative Secretary

rh:gd

10/7

September 29, 1964

Mr. Louis M. Zimmerman
City Commissioner of Human Rights
80 Lafayette Street
New York, N.Y.

Dear Mr. Zimmerman:

We have been advised that Safeway-Trails, Inc. has violated the commitment made by them. This appears to show a singularly bad lack of good faith.

We trust that you will take all steps available to you, including such conferences as may be necessary, to correct this situation.

Thank you for your cooperation.

Very truly yours,

Carl Rachlin
General Counsel

CR:hdl

cc: Mrs. Rachele Horowitz, WDL

THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS
80 Lafayette Street - New York, N. Y. 10013 - Tel. 566-2121

STANLEY H. LOWELL
Chairman
MADISON S. JONES
Executive Director

ROBERT F. WAGNER
Mayor

2 1964

October 1, 1964

Carl Rachlin, Esq.
General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Dear Mr. Rachlin:

This will acknowledge receipt of your letter of September 30, 1964.

For your information, a conference has been set up in the office of this Commission for Thursday, October 8, 1964 at 10:00 A.M.

It is my understanding that the National Office of CORE at that time will be represented by Miss Joyce Ware and/or Eric Mann.

Thank you for your continuing interest.

Sincerely yours,

L. M. Zimmerman

Louis M. Zimmerman
Chief
Conciliation Services

LMZ:bp

(FORMERLY THE COMMISSION ON INTERGROUP RELATIONS)

Make file:
CORE Northeast Reg Office

October 23, 1964

Mr. Lou Smith
CORE Northeast Regional Office
48 West 125th Street
New York 27, N.Y.

Dear Lou,

Today we received a copy of Eric Mann's mailing with regard to Trailways negotiations. As it happens, we recently were required to write a letter to the City Commisioner of Human Rights on this matter, and were wondering who had the file on this matter.

I understand that this type of matter will henceforth be handled from your office. Sometime soon when you are in the office, I'd appreciate it if you would give me a quick run-down on all such situations where CORE is negotiating with various firms with regard to hiring practices.

Also, from now on, will you please be sure that the Legal Department will always receive a copy of any mailings that go out from your office to the chapters under your jurisdiction?

One last thing: Please let us know a little ahead of time whenever you have reason to believe that legal assistance may possibly be required, so that we can prepare ourselves accordingly.

As Mr. Rachlin would say, we are trying desperately to run an orderly department, so we will desperately appreciate your desperate cooperation!

Sincerely,

Hannie de Leeuw
Secretary to Carl Rachlin,
General Counsel

C O R E

INTEROFFICE MEMO

November 9, 1964

TO: Mr. Lou Smith, Northeast Regional Director

FROM: Carl Rachlin, General Counsel

CC: Mr. Eric Mann
George Schiffer, Esq.
Jules Zalon, Esq.

Mr. Sturrs of the Vera Foundation called me and requested that we make an extra special effort to be certain that everyone who was summonsed in the Trailways demonstration be present in court on all necessary occasions.

This is the first major activity in this area which the police handled by summons instead of arrest. This obviously is of great advantage to us. The Vera Foundation has been working on this kind of activity for some years now and it is important to show that there is no need for arrests, and thus bail, in these kinds of cases by making certain that everyone is present.

I am sure there will be no problem but in light of the request to me, I pass it on to you because any failure at this time of someone to show would be a very serious detriment to the civil rights movement.

Sincerely,

C
hdl

CR:hdl

45c

WILLIAM LEE AKERS
ATTORNEY AT LAW

LOCUST 8-1670

SUITE 805
ONE EAST PENN SQUARE
PHILADELPHIA 7, PENNSYLVANIA

January 6, 1965

Carl Rachlin, Esquire
165 West 46th Street
New York, New York

Re: NAACP & Trailways vs. CORE

Dear Carl:

Enclosed find pleadings to date in the case.

To me, the merits of the controversy do not warrant the bitter, mudslinging attacks which will inevitably ensue if this case is tried to its unsatisfactory conclusion.

My good friend, Cecil, is completely power drunk. It would not surprise me if the idea of the action initiated with him, the thrust being that he alone shall represent the movement in Philadelphia.

Sincerely yours,

Bill

WILLIAM LEE AKERS

Encls.

cc: Robert W. Carter, Esq.
20 West 40th Street
New York, N. Y.

1/6/65
Spoke to Bob Carter
who told me he had decided
Cal alone to withdraw,
[illegible] agrees.

refer to Carl Rachlin

2229 N. Broad St
Phila 32.

JAN 11 1965

January 7, 1965

Dr. George Wiley
Associate National Director
Congress of Racial Equality
38 Park Row
New York, New York

Dear Sir:

Philadelphia CORE has been pushed into a very bad position by the local chapter of the NAACP. There seems to be only one thing left to do - fight for our lives.

The local NAACP and Safeway Trails, Inc. have gone to court to enjoin us from demonstrating against Safeway Trails, Inc. The local chapter president is a dictator as far as the chapter is concerned. They are afraid of the man and will not stop him.

The Safeway attorney doublecrossed us and it is likely that an injunction will be granted. Saturday, January 9th, we will have a demonstration at our local terminal regardless of any court action.

We will have our attorney answer the injunction, and will start a suit for slander against the local NAACP. I think in the light of the enclosed news article, and the reference to Mr. Farmer as an "Uncle Tom", some attention should be given to the NAACP on a national level. Some elected official or representative at the national level of CORE should demand a retraction, an apology, or both.

Yours in Freedom,

James O. Williams
Chairman
Philadelphia CORE

JOW
jb

cc: James McCain
Marvin Rich
James Peck

PHILA. INQUIRER

Picketing Threat By CORE Hit

Cecil B. Moore, Philadelphia branch president of the National Association for the Advancement of Colored People, said Wednesday that the Congress of Racial Equality was trying to muscle in on his agreement with the Trailways Bus Co.

Moore said the NAACP negotiated a satisfactory agreement over hiring Negro bus drivers a year ago after picketing in bitter cold weather. Despite this agreement, CORE threatened Wednesday to picket the bus terminal at 13th and Filbert sts.

'EVIL CORRECTED'

In Philadelphia, Trailways buses are run by Safeway Trails, Inc., and serve New York and Washington.

"We are condemning CORE as a bunch of irresponsible civil-rights delinquents," Moore said. "We think picketing and demonstrating are all right to call attention to an evil. But when that evil is corrected, then it serves only to selfishly call attention to themselves."

FARMER ASSAILED

Moore described CORE's national leader, James Farmer, as an "Uncle Tom" who "wants to seat the Mississippi Congressional delegation." He said the organization was composed of "90 percent insincere, exhibitionist, frustrated, beatnik white intellectuals and Negroes whose sole purpose is to call attention to themselves."

Moore called on Negroes to continue riding Trailways buses. He said the bus company hired 16 Negro drivers last year, 13 more this year, and had 50 percent Negro garage and clerical employes, as well as a Negro foreman and information clerk.

PHILA INQUIRER 12/31/64

BULLETIN
1/6/65

NAACP Joins Suit Against CORE

The local NAACP yesterday joined with Safeway Trails, Inc., in seeking an injunction restraining CORE from future demonstrations at the Safeway bus terminal, 13th and Arch sts.

The suit, filed by Isaiah W. Crippins, NAACP attorney, and John F. Naulty, Safeway counsel, alleged CORE "assembled a mob" at the terminal Dec. 30, threatening and obstructing the movement of bus passengers.

Judge Eugene V. Alessandroni scheduled a hearing for 2 P. M. Thursday.

Crippins and Naulty averred in their petition that NAACP and Safeway some time ago worked out an integration policy and that CORE now conspires to upset the harmony that exists between them.

CONGRESS OF RACIAL EQUALITY

PHILADELPHIA CORE

working to abolish racial discrimination by direct nonviolent methods

2229 N. BROAD ST.
PHILADELPHIA 32, PA.
ZIP CODE 19132
POplar 5 - 2229
AREA CODE 215

James O. Williams
CHAIRMAN

John Bryant Jr.
VICE-CHAIRMAN

Joy Brown
SECRETARY

Doris M. Taylor
TREASURER

EXECUTIVE MEMBERS AT LARGE
Arthur Alston
Stanley Diamond
Benjamin Jones
Iris Jones
Joseph Smith

January 10,1965

Carl Rachlin
Congress of Racial Equality
38 Park Row
New York 38, New York

JAN 12 1965

Dear Carl:

Enclosed is a copy of injunction issued Friday, January 8, 1965. CORE picketed both Saturday and Sunday under police survielance which we requested. The Human Relations Commission and American Civil Liberties Union were also observers at our request.

We fully intend to continue our demonstrations until further court action is taken. Pictures taken by CORE, the press and police department showing our orderly and peaceful demonstration are available on request.

Our attorney, William L. Akers was on the line both days. I took his advise on what we could and couldn't do.

Press is good and slanting our way more each day. Moore is calling more and more names and seems to be losing his reason.

Will keep you informed.

Yours in Freedom,

James O. Williams
Chairman,
Philadelphia CORE

JOW:ac

Enclosure

write to [illegible]

January 9, 1965

STATEMENT TO THE PRESS

Philadelphia CORE's main objective is to fight discrimination wherever we find it. One of our most valuable tools is peaceful demonstrations.

Our right to fight discrimination and to protest when we find it is at stake. Cecil Moore, Isiah Crippins, and Safeway Trails, Inc., acting in concert, have taken CORE to court.

CORE will continue to demonstrate and get jobs for Negroes in spite of this sell out by Moore and Crippins. The charges will be fought in court and the public will be made aware of the full implications of this betrayal and dangerous misuse of the law.

Cecil Moore has a long history of selling out, but never has gone this far. To prove how little Moore has done, CORE is starting a series of checks on the unions, school segregation, Greyhound, and every other project Mr. Moore claims to have completed.

Philadelphia CORE serves notice on every industry, union, and department of the City, State and Federal Government that during 1965 CORE will seek full employment of every Negro in this City in positions they qualify for.

Better housing and more realistic public assistance will also be called for. Philadelphia CORE will fight its own war in its own way against discrimination. We will also do our own negotiating through the Commission on Human Relations. No agreement made previously will be considered binding unless it has achieved really fair employment of Negro workers.

January 11, 1965

Wrong address

William Lee Akers, Esq.
737 Commercial Trust Building
Philadelphia 2, Pennsylvania

Dear Bill,

I have received a copy of a letter from Mr. James O. Williams, with a photocopy of a statement in the Philadelphia Enquirer in which Moore allegedly describes Mr. Farmer as an "Uncle Tom" who "wants to seat the Mississippi Congressional delegation." This is both untrue and defamatory as you can well imagine.

Up to this point CORE has never begun libel actions even though there have been situations where serious statements have been made about us. I would hope you would keep me informed before any local action is commenced. Mr. Farmer is in Africa now but I will discuss the matter with him promptly upon his return.

With kindest regards,

Carl Rachlin
General Counsel

cc: Dr. G. Wiley
Mr. Lou Smith

CR:hdl

LAW OFFICES
WILLIAM LEE AKERS
737 COMMERCIAL TRUST BUILDING
BROAD & SOUTH PENN SQUARE
PHILADELPHIA 2, PA.

LOCUST 8-1670

January 11, 1965

JAN 13 REC'D

Cooperating Counsel

Re: NAACP & Safeway Trails, Incorporated
vs. CORE et al
COMMON PLEAS NO. 2, December Term 1964
NO. 1567

Gentlemen:

I believe it would be valuable to the cause of civil liberties to contest the Injunction entered in the above case. At the present time, no answer has been filed or appearance entered.

It appears that Preliminary Objections, an Answer and perhaps a Counterclaim would be appropriate for some if not all of the defendants. Service was made on January 5, 1964.

A direct attack by Motion To Dissolve should also be considered.

It presently appears that my direct representation of any defendant would greatly prejudice his or its opportunity to be heard on the merits. If you would be interested in reviewing events to date with the possibility of actively entering the case as counsel, please contact me.

I would appreciate your referring this matter to any other counsel who you feel would be appropriately concerned.

Very truly yours,

WILLIAM LEE AKERS

cc: Carl Rachlin, Esquire
165 W. 46th Street
New York, N.Y.

12
B
The Evening Bulletin
PHILADELPHIA, Friday, January 8, 1965

NAACP, CORE in Battle Over Safeway Picketing

The NAACP and CORE had a confrontation in court yesterday in a battle over hiring of Negro bus drivers by Safeway Trails, Inc., which is part of the nationwide Trailways bus system.

Judge Eugene V. Alessandroni presided.

The hearing was on a joint suit by NAACP and Safeway for an injunction to restrain "demonstrations" by CORE at Safeway's terminal, 13th and Arch sts.

The hearing started about 4 P. M. At 5 Judge Alessandroni abruptly called a halt to the proceedings until later.

CORE Lawyer Leaves

Before this happened there were these developments:

Isaiah H. Crippins, counsel for the NAACP, withdrew his group as a plaintiff and offered to have the NAACP act as witness for Safeway.

William Lee Akers, CORE attorney, left the courtroom, then came back and said he was unable to represent his client.

John F. Naulty, Safeway's attorney, described how CORE put on a demonstration and handed out leaflets at the Safeway terminal on New Year's Eve.

Tells of Agreement

Naulty told of an agreement reached last year with NAACP for integrating the entire bus system from Boston to Washington, D. C.

"We have compiled with our agreement with NAACP" said Naulty.

Akers asked the judge to dismis the suit which, he said, sought to restrain peaceful picketing which is guaranteed to all persons.

He told the court that Naulty had assured him that he would have the hearing ocntinued. He said that a meeting had been scheduled for tomorrow in Washington, D. C., and if the meeting between CORE and Safeway goes on as scheduled he would guarantee no further demonstrations.

No Meeting

Naulty said there will be no meeting tomorrow.

"We are not violating the integration laws of the United States," he said.

A Safeway employe then took the stand to relate what happened at the terminal on New Year's Eve.

Akers said he had no questions because he was unable to represent his client, CORE, under the circumstances.

Next witness was Cecil B. Moore, president of the Philadelphia branch of NAACP.

Moore accused CORE members of being "intellectual beatniks" and "frustrated Negroes."

Akers Objects

Akers jumped to his feet demanding Moore's remarks be stricken as "scandalously impertinent."

Judge Alessandroni reminded him he had said he wasn't representing his client.

Akers again explained, "I'm totally unprepared to offer a defense of my client."

Judge Alessandroni said "no one is keeping you here." And he said: "I consider your action irresponsible as a member of this bar."

Akers left the courtroom.

Moore continued his explanation of how NAACP got Safeway to hire 16 Negro drivers last year.

Then Judge Alessandroni interrupted to announce the hearing would resume later.

Outside court, Akers explained that he was unable to defend his CORE because he had been promised a continuance by Naulty.

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January 11, 1965

Mr. James O. Williams
Chairman
Philadelphia CORE
2229 N. Broad St.
Philadelphia 32, Penna.

Dear Mr. Williams,

Your letter to Dr. Wiley has been referred to me for reply.

I have been in touch with Bill Akers since this terrible lawsuit was started and had several discussions with Mr. Robert Carter, Counsel to the NAACP and, as you know by now, the NAACP withdrew from the suit.

Of course, this still leaves open the question of calling Mr. Farmer an "Uncle Tom", which some courts have said is a slanderous remark. Mr. Farmer is in Africa at this moment but I will keep in touch with Bill Akers on this part of the problem also.

Sincerely,

Carl Rachlin
General Counsel

cc: William Akers, Esq.
Dr. G. Wiley
Mr. Lou Smith

CR:bdl

~~CHARLES WRIGHT~~
ATTORNEY AT LAW
SUITE 803-805
ONE EAST PENN SQUARE BUILDING
JUNIPER AND MARKET STREETS
PHILADELPHIA 7, PENNSYLVANIA
LOCUST 8-1670

LAW OFFICES
WILLIAM LEE AKERS
SUITE 805
ONE EAST PENN SQUARE BLDG.
PHILADELPHIA 7, PA.

LAW OFFICES
WILLIAM LEE AKERS
SUITE 805
ONE EAST PENN SQUARE BLDG.
PHILADELPHIA 7, PA.

January 12, 1965

JAN 1 REC'D

Carl Rachlin, Esquire
165 West 46th Street
New York, New York

Dear Carl:

As you probably know, NAACP and TRAILWAYS vs. CORE has erupted into a vicious, bloody battle dispite our efforts.

I am advised that the New York City Commission on Human Rights has had Trailways under investigation for some time and their findings will be reported shortly. The Commission's report may be crucial.

Please advise me if and when their report is made public and send me a copy if you can.

Very truly yours,

Bill

William Lee Akers

WLA/nk

P. S. I led the picket line after the Injunction and have not been cited for contempt yet.

January 13, 1965

Robert Carter, Esq.
N.A.A.C.P.
20 West 40th Street
New York, N.Y.

Re: Safeway Trails, NAACP and CORE

Dear Bob,

I have spent a little time running down those questions you discussed with me the other day.

I am afraid we have run into a rather important factual question. According to the information you gave me, there were 16 Negro drivers hired by the company last year. My information, which I understand can be documented and was, at least in part, also given to the New York City Commission on Human Rights, indicates that there were only six Negro drivers hired last year, none of whom came from Pennsylvania.

I also enclose a copy of a letter I have this day received from Bill Akers, who himself has, as you can see from his letter, been participating both as an attorney and as a leader of the demonstration. I would think, in view of these various factors involved, that we ought to have a meeting in New York or Philadelphia with a representative of your Philadelphia chapter and of our Philadelphia chapter, as well as Bill, yourself and me, so that we can avoid having this problem become more and more difficult.

As you can see, Bill Akers is very concerned and we both know him to be a reputable young attorney not given to loose language.

With best personal regards,

Sincerely,

Carl Rachlin
General Counsel

cc: William L. Akers, Esq.
Mr. Louis Smith
Dr. G. Wiley
Enc./Copy of letter to Mr. Marvin E. Walsh,
Safeway Trails, of today's date
CR:hdl

a national organization with affiliated local groups working

CONGRESS OF
CORE
RACIAL EQUALITY

to abolish racial discrimination by direct, nonviolent methods

38 PARK ROW
NEW YORK 38, NEW YORK
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January 13, 1965

Mr. Marvin E. Walsh
Executive Vice President
Safeway Trails, Inc.
1200 "I" Street N.W.
Washington, D.C.

Dear Mr. Walsh,

I have just been advised that a meeting which I was told was scheduled for this Saturday in Washington has been called off and that you have insisted it be held in Philadelphia.

Of course, we cannot agree to such a meeting in Philadelphia since this program has initiated from the Northeast Regional Office of CORE located in New York City, and we have had our discussions with you and your associates in your office in Washington, and we know that the New York City Commission on Human Rights has been in touch with your office in Washington. There is no reason for such a meeting in Philadelphia except for the purpose of attempting to create an incident which would make a discussion of this matter impossible. We would not like to think that, despite the delay of over a year, this matter is impossible of settlement.

It is now clear, of course, that Mr. Moore had no authority to participate in a lawsuit jointly with you in Philadelphia and to have a meeting there would serve no useful purpose except to exacerbate an already difficult situation.

As you know, CORE is a direct action organization always willing to negotiate but, when the other party (and I trust that this does not apply to Safeway Trails Inc.) fails to recognize the necessity of honorable negotiations, CORE is ready, should it be necessary, to have a direct confrontation to present the issue to the public.

We believe it important that a meeting be held a week from Saturday in Washington. If you persist in your present position, we shall have no alternative but to take up

./.

this matter directly with the United States Government for the purpose of seeking suspension of relations you have with various Federal Departments. We believe we can document a pattern of discrimination in employment on your part and this constitutes a violation of Federal rules and regulations.

It is never our intention to cause anyone loss or punishment and we are always readdy, willing and able to negotiate honorably to solve problems of mutual and national concern.

May we hear from you that a meeting in Washington or New York on Saturday, January 23rd is agreeable to you?

Very truly yours,

Carl Rachlin
General Counsel

CR:hdl

Safeway
CORE

JAN 18 REC'D

LAW OFFICES
WILLIAM LEE AKERS
737 COMMERCIAL TRUST BUILDING
BROAD & SOUTH PENN SQUARE
PHILADELPHIA 2, PA.
LOCUST 8-1670

January 15, 1965

Mr. Roy Wilkins
c/o NAACP
20 West 40th Street
New York, New York

COPY

Dear Mr. Wilkins:

I am writing to you as a member of NAACP. I have recently discussed the case of NAACP and Safeway Trails, Incorporated vs. CORE in which the plaintiffs obtained an injunction against the defendant with Mr. Carter.

Your public support of the unauthorized action by Mr. Moore without getting the facts has harmed all of us who are more concerned with out problems as a group than with power grabs by organizations.

Mr. Moore purports to bind all persons, Negro and White, to his agreement with Trailways Bus Company, a nationwide enterprise. Despite this potent absurdity, CORE simply inquired what his agreement was. The answer was, none of your business. The Bus Company is in default of its previous agreement with National CORE and its agreement with NAACP. Nevertheless Mr. Moore has taken the position that no one can attack the Bus Company. Since the matter involves the Company's terminals in Boston, New York, Philadelphia, Baltimore and Washington, I personally sought to have the matter handled by representatives of the National Office of both groups. I was completely rebuffed by Mr. Moore.

If his action was shameful, yours was doubly so because he was at least asserting a real or imagined interest

LAW OFFICES
WILLIAM LEE AKERS
737 COMMERCIAL TRUST BUILDING
BROAD & SOUTH PENN SQUARE
PHILADELPHIA 2, PA.
LOCUST 8-1670

TO: MR. ROY WILKINS

in the merits. Your interest is merely organizational.

I suggest that you contact Mr. Madison S. Jones of the New York City Commission on Human Rights regarding the Bus Company's employment practices. You will then be in a better position to evaluate Mr. Moore's agreement with the Bus Company. (I assume you know what it was.)

CORE has shown admirable restraint and made no reply to Mr. Moore's public assertions that CORE members are beatniks, smokers of marijuana, frustrated Negroes, Jim Farmer is an Uncle Tom, et cetera. They have tried every honorable means to avoid this public scandal. NAACP has struck the first blow. Unless some means is found to honorably adjust the differences between the organizations, it will not be the last.

Please do not favor me with a reply from one of your able assistants.

Very truly yours,

WILLIAM LEE AKERS

cc: Carl Racklin, Esquire
165 W. 46th St.
New York, N.Y.

WLA:mbj

COPY

LAW OFFICES
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HOR
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JAN 18

Safe Trave

January 15, 1965

James L. Williams, Chairman
Congress of Racial Equality
2229 North Broad Street
Philadelphia, Pennsylvania 19132

COPY

Re: NAACP and Safeway Trails, Inc.
v. CORE, et al.

Dear Jim:

Confirming our telephone conversation, Gil Cantor and I met with Judge Alessandroni and counsel for Safeway Trails, Inc. The judge felt that picketing last week-end by CORE was in violation of the injunction and he asked counsel for Trailways why he had not filed a petition for contempt. We argued that the injunction did not prohibit peaceful picketing. The judge set the whole case down for hearing next Friday at 2:00 P.M. At that time, we will argue that the injunction should never have been granted and should be dissolved.

In the meantime, we agreed with counsel for Trailw in the presence of the judge that CORE will not have more than 12 people on the picket line. It is mandatory that you live up to this agreement in every particular and you assured me on the telephone that you would.

Please remember that these 12 include not only those on the picket line but those that are handing out pamph lets.

Please make a list of each person picketing or handing out pamphlets together with the exact time that each arrives and departs and let me have this list when the picket is concluded.

Sincerely,

Burton Caine
Burton Caine
For WOLF, BLOCK, SCHORR and SOLIS-COHEN

BC/fo
cc: Carl Rachlin, Esquire
Gilbert M. Cantor, Esquire

---

file

GILBERT M. CANTOR

JAN 15 REC'D 1965

l:

write your attention

Inc v Wilson,

94, 166 A2d 271

t wishes.

Gil

January 15, 1965

Gilbert M. Cantor, Esq.
1300 Two Penn Center Plaza
Philadelphia 2, Pennsylvania

Re: Safeway Trails

Dear Gil,

I was so pleased to hear that you and Burton Caine are working on the Safeway Trails v. CORE case.

Enclosed is a memorandum on business torts which may be of some little help to you. There is a long note in 62 Col. Law Rev. 474 which I think would interest you. You will note this memorandum refers however to an article in the Georgia Bar Journal, which may be of some interest. The interesting point about the Columbia note was the reluctant conclusion that the writer came to, indicating that in a peaceful demonstration such as conducted by CORE in this matter, was not the subject of an award for damages.

I am also sending you a fact sheet and some correspondence which may be of importance to you.

Please let us know whatever we can do for you and, obviously, we will oblige to the best of our ability.

Sincerely,

Carl Rachlin
General Counsel

cc: Burton Caine, Esq.
Mr. Louis Smith, CORE Northeast
Regional Director

CR:hdl

York Court Case

Dear Jim I was in Jamaica when your letter came. Please keep me informed. Regards CR

CONGRESS OF RACIAL EQUALITY

PHILADELPHIA CORE

working to abolish racial discrimination by direct nonviolent methods

2229 N. BROAD ST.
PHILADELPHIA 32, PA.
ZIP CODE 19132
POplar 5 - 2229
AREA CODE 215

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Iris Jones
Joseph Smith

January 18, 1965

JAN 22 1965

Carl Rachlin, Esq.
Attorney at Law
Congress of Racial Equality
38 Park Row
New York, New York

Dear Mr. Rachlin:

Philadelphia CORE will go to court Friday, January 22, to answer the charges listed in the injunction. Burton Cain and Gilbert Cantor will represent CORE, and three representatives of ACLU will also be with us.

A move by Safeway to start a second court action is a very real possibility. I have it on very good authority that this effort will be made to cut our picket lines to 5 or 6 people.

The NAACP has withdrawn on paper, but for all practical purposes they are still active, as counselors and witnesses.

Judge Allesandroni has made public statements claiming CORE has shown contempt of court by picketing since his decision was made. This hearing Friday will be in his court.

I know you are busy, but is it possible for you to be here on Friday? If so, please contact me.

Yours in Freedom,

James O. Williams

James O. Williams
Chairman
Philadelphia CORE

JOW
jb

January 21, 1965

Mr. Charles B. McInnis
Safeway Trails, Inc.
1200 "Eye" Street, N.W.
Washington, D.C.

Dear Sir:

Enclosed is copy of a letter previously sent to Mr. Marvin E. Walsh to which we have received no answer.

In light of the fact that the charges made against Safeway Trails are of a serious nature and, if not promptly disposed of, will have to be taken by us to various Federal agencies with whom Safeway Trails has contractual arrangements or performs services for, we thought that you perhaps had not been informed to the full extent of the problem.

We are ready and willing to meet to resolve this problem. Please notify us immediately as to your willingness to meet with us.

Very truly yours,

Carl Rachlin
General Counsel

CR:hdl

January 21, 1965

Mr. Claude A. Jessup
Safeway Trails, Inc.
1200 "Eye" Street N.W.
Washington, D.C.

Dear Sir:

Enclosed is copy of a letter previously sent to Mr. Marvin E. Walsh to which we have received no answer.

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Very truly yours,

Carl Rachlin
General Counsel

CR:hdl

January 21, 1965

Mr. N. W. Scheitel
Vice President
Transcontinental Bus System
315 Continental Avenue
Dallas, Texas

Re: Safeway Trails, Inc.

Dear Sir:

Enclosed is copy of a letter previously sent to Mr. Marvin E. Walsh to which we have received no answer.

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Very truly yours,

Carl Rachlin
General Counsel

CR:hdl

January 21, 1965

Mr. A. J. Hamilton
Secretary-Treasurer
Transcontinental Bus System
315 Continental Avenue
Dallas, Texas

Re: Safeway Trails, Inc.

Dear Sir:

Enclosed is copy of a letter previously sent to Mr. Marvin E. Walsh to which we have received no answer.

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Very truly yours,

Carl Rachlin
General Counsel

CR:hdl

January 21, 1965

Mr. M. E. Moore
President
Transcontinental Bus System
315 Continental Avenue
Dallas, Texas

Re: Safeway Trails, Inc.

Dear Sir:

Enclosed is copy of a letter previously sent to Mr. Marvin E. Walsh to which we have received no answer.

In light of the fact that the charges made against Safeway Trails are of a serious nature and, if not promptly disposed of, will have to be taken by us to various Federal agencies with whom Safeway Trails has contractual arrangements or performs services for, we thought that you perhaps had not been informed to the full extent of the problem.

We are ready and willing to meet to resolve this problem. Please notify us immediately as to your willingness to meet with us.

Very truly yours,

Carl Rachlin
General Counsel

CR:hdl

My name is Edward Barnes, I live at 119-31 145th St., South Ozone Park, New York, age 35, I am a Negro. I have been working for Trailways Bus Company for 10½ years, I feel I have been discriminated against because:

> Last year I put in an application for a ticket agent. I was assured at a meeting with the City Commissioner Workers Defense League, CORE and with Trailways personnel, that as soon as these Ticket Agent jobs were made available, the Negro Porters in the company and the Puerto Ricans would be given top priority in the Ticket Agent department even though we understood that we would have to go into the Information Room and work at least two weeks or longer until these Ticket Agent jobs made themselves available. However, even though the company agreed to give us these jobs they did hire from the street, five or six Ticket Agents, five or six Information Clerks making it all most impossible for Porters to advance themselves from the Porter ranks to the Information job then to the Ticket Agents job
>
> We then went back to CORE and asked them to intercede to find out what was happening with our promotions that the company had agreed to bring about as soon as possible. At this time, a meeting was held down at City Commissioner's office again with Workers Defense League, CORE, City Commissioner and Trailways. Mr. Zimmerman, the Commissioner down at the City Commissioners office couldn't understand why these agreements weren't lived up to; He too was just as mad about this situation as CORE.
>
> At this second meeting the Company stated that they had no applications of the porter applying for these Ticket Agent jobs, at this point Mr. Zimmerman, City Commissioner down at the City Commissioner's office produced five applications from the Porters stating that they wanted to become Ticket Agents. He showed these to the Company officials and they then agreed that they would try to do something about this situation. These applications were dated November 27, 1963.

I also feel that this company does discriminated because:

We were given aptitude test for better positions with the company. We were told later that none of us past these test. The State Commissioner On Human Rights found that I had past the test, but wasn't given the job. On these grounds, the State Commissioner charged the company with discrimination and told the company that they would have to put me, Ed Barnes, in the Baggage Room with top seniority. At this point I told the Commissioner down at the State Commissioner's office that I had an application in as Ticket Agent and the company had agreed to give me this job as soon as it made itself available. I was no longer interested in the Baggage Room and much preferred to take this TicketAgent job, so at this time I refused to take the advanced job as a Baggage Agent.

During the course of this state investigation the jobs in the Baggage Room had changed so drastically that I at this particular point was no longer interested in becoming a Baggage Agent, that's why I had to put in an application as a ticket agent hoping that I would be given a chance to try to perform duties as a Ticket Agent.

I am now employed as a Information Clerk at Trailways. Had the company acted in good faith on my application in 1963, I believe at this time I would be a Ticket Agent with seniority working at the job that I had applied for sometime ago.

My name is Noel Quinones, my address is 4445 E. 120th St. I ma 29 years old, I am a PuertoRican. I worked for the Trailways Company for about 6 years, my position was a Porter, but my last few months with the company wasworking as a Baggage Clerk. The reasonss for that was because I was laid off from the Porter category. I have since left the company and I work for a Finance Co. The reason that I left the company was because of the way they were treating me. I saw that after working all those years for the company I was getting no kind of advancement and I was getting no place. I felt that I would have to take anothe job even though I would be making less moneytbecause I just couldn't take any more from Trailway Bus Company. I am now charging discrimination against the company and my reasons are:

> On November 27, I made an application with the City Commissioner and Trailways stating that I wanted to become an Information Clerk hoping to eventually become a Ticket Agent. I felt that I was qualified for the job, but the company didn't think so, although I have proven that I was qualified for the job because I had taken the test prior to working in the company when I first joined the organization and I passed them. Now all of a suddentthey claim my accent would be a handicap when I start talking over the phone, therefore, people won't be able to understand me.
>
> I am presently employed with a Finance Company where the use of the language is important and they don't find that being a Puerto Rican or having an accent would handicap me.
>
> Since the time that I took the test I made my application to become a Ticket Agent; Information Clerks and Ticket Agents were hired from the streets and I never had a chance, although, I was working for the company at the time to be advanced to a higher position. Later when we had a meeting at the City Commissioner's office and I asked the Company in front of the Commissioner, Why I had not receive the promotion, I was told that they never received an application from me. This was proven wrong, because the Commissioner produced my application and some more from my co-workers.

After this meeting I waited a few more months to find out whether the company was going to remedy the situation, but I saw that I was getting no place with this company and they would never give me a chance to advance. That's why I just couldn't take it anymore and left the company.

My name is Willie Thorton. I live at 76 Williams Avenue, Amityville, New York. My age is 33. I have been employed by Safeway Trails for 8 years or better. This company has discriminated against me ever since I have been there. My reasons for saying this are as follows:

> I am a Negro and was working for the company as a Porter; during this time we were doing the job as well as possible and we had our own Baggage System at that time. But eventa ually they decided to open up their own Baggage Room, and at this time a test came up which the company offered to all the employees. They said it wouldn't be necessary to take the test if you didn't want to take it, but eventually, we found out differently, because they said if we didn't take this test we wouldn't be available for any other job. Some of the fellows took the test, I didn't take the test because I felt personally that I didn't need it. I thought being with the company as long as I was with them if they open up a Baggage Room, I was qualified for any position they were about to open up, so they opened up their Baggage Room, and in return they took our jobs away from us. Our jobs as Porters was taken away from us, and replaced my menial jobs such as Baggage Housers, loading and unloading buses.
>
> We felt that we were being treated wrong, and so we sort for outside help. When we did this we became trouble makers with the company, and they did everything in their power to get us out of their place. In return they got pressure put on them from the City Commissioner, and eventually they gave us our jobs back. Some of the fellows are still harassed. Since that time when we got our jobs back as Porters, the jobs that we had been doing for so long; i was constantly harassed and asked to go into the Baggage Room because the Supervisor in charge felt that I could do the job.

In 1963, I filed an application for a Ticket Agent with Trailways, but I realized that I would have to become an Information Clerk before being placed as a Ticket Agent but they agreed to give us next chance at the next opening in the Ticket Agent Department, but six people were hired before me.

I still did not receive the job I was promised until CORE started a whole series of demonstrations. I received my job in December, 1964, and I feel that I have been discriminated against because my seniority begins from then rather than when I should have gotten it.

I also got very nervous on my job because people like Ray Hintz, keep telling me that they do not think that I am going to make it and the company is going to fire me.

Charles Griffin lives at 711 FDR Drive. My age is 39. I work for Trailway Bus Company. I am a Negro. I was hired in 1955 as a porter for Trailways. I have been working for Trailways for 9 years and 5 months. I feel that I have been discriminated against because:

> In 1962 (May) Trailways opened their own Baggage Room which before had been taken care of by New York Port Authority. The hired about forty Baggage Agents around March 1962. They brought these new Baggage Agents down after they had been trained down at the Information Room to us and told us that we were no longer qualified to do part of our jobs and they changed the classification of our jobs and said that we were no longer able to do the Porter jobs because it required more and we hadn't past the test. After they trained these Baggage Agents they told us that we would have to take an I.Q. test which had been taken by every person that worked for Trailways, but that this test wouldn't mean anything to us, we could take it and if we didn't it would not have any affect. At this point I took this test, they gave it to me during working hours and I felt that I didn't have much time so I rushed through it since it didn't mean anything. When I left the room, Mr. Gray told me that some of the other Porters would be sorry that they didn't take the test (I don't know why he said that).
>
> Around May 1962, the supervisor told us that our classification had been changed which was against the Union contract, because our classification was changed from Porter to Baggage Handler, which is a lower classification. It consits of manual labor. Loading buses, sweeping tracks, getting the garbage off the bus, bringing water from the bus, bringing the Baggage from the Baggage Room, loading buses. Then I saw that we were in trouble and we were losing our jobs little by little, so after all discrimination charges were made against Trailways the State Commissioner on Human Rights and about 6 other co-workers. During the investigation our jobs were given back, the job that we had as Porters. While the investigation was going on the company with the pressure applied on them by the state, changed our classification back as it was before as it was (Porters).

I don't know how many other fellows he got in touch with, but he was always after me to go in. Eventually, it got to a point when they wanted to lay off, and I was one of the four fellows that got laid off at that time.

I and the other fellows had an application in for the Ticket Agent positions and I feel that if I had been given fair treatment from the company, I also would be a Ticket Agent now, instead of the people that they hired before me. I realize that I would have had to take a test for the Ticket Agent position, but the company had never even given me the chance nor did they acknowledge my application.

I was told at one time by the Chief Baggage Agent for Trailways, (1) Mr. Raymond Hintz, that because the other Negro Porters had been trouble makers (as he put it) and my being on the bottom of the totem poll, that is why my job was eliminated and they forced me to go into the Baggage Room. I feel that this was an attempt to turn me against the other Negro workers whom I I had worked with for so long. I feel that given the chance with the application that I had put in for the Ticket Agent, I would have had the job and wouldn't have to deprive myself by going to the Baggage Room as a Baggage Agent, which I knew that I should had better from the seniority that I had with the company, and if the company hadn't discriminated, I would presently be working as a Ticket Agent with seniority.

Just file
in
Safeway
Philadelphia

January 25, 1965

Mr. James O. Williams
Chairman
Philadelphia CORE
2229 N. Broad St.
Philadelphia, Pa. 19132

Dear Jim,

I was in Louisiana when your letter of the 18th came.

Please keep me informed.

Regards,

Carl Rachlin
General Counsel

cc: G. Cantor, Esq.
B. Caine, Esq.

GILBERT M. CANTOR, ESQUIRE · 1300 TWO PENN CENTER PLAZA · PHILADELPHIA 2 · LOCUST 3-2115

JAN 27 [illegible]

January 25, 1965

Carl Rachlin, Esq.
280 Broadway
New York, N. Y.

Dear Carl:

First of all, Burt Caine and I wish to congratulate you on your magificent and important victory in Cox vs. Louisiana.

Second, may we thank you for the help you have given us in connection with the Safeway Trails Inc. vs. CORE. In that connection, I am enclosing a copy of the brief we presented to the Court on Friday. The CORE position was brilliantly argued by Burt, as the Judge acknowledged from the Bench, and we are now awaiting his decision. We will still have to answer the Complaint for Permanent Injunction even if we are successful in having the Preliminary Injunction dissolved.

Sincerely yours,

Gilbert M. Cantor

GMC:pmcc

Enclosure

CONTINENTAL TRAILWAYS
315 CONTINENTAL AVENUE
DALLAS, TEXAS 75207
RI 8-5211 AREA CODE 214

WARREN A. GOFF
GENERAL COUNSEL
D. PAUL STAFFORD
COMMERCE COUNSEL

CARL B. CALLAWAY
VICE PRESIDENT AND
CHAIRMAN AT LAW
ALFRED CRAGER
CORPORATE COUNSEL

FEB 1 1965

January 29, 1965

Mr. Carl Rachlin
General Counsel
Congress of Racial Equality
38 Park Row
New York City, New York

Re: Safeway Trails, Inc.

Dear Mr. Rachlin:

The letters which you wrote on January 21, 1965, to Mr. M. E. Moore, President, Mr. A. J. Hamilton, Secretary-Treasurer, and Mr. N. W. Scheitel, Vice President, of Transcontinental Bus System, Inc., with reference to the above captioned matter have been referred to me for answer.

You are quite correct when you say that Transcontinental has certain contractual arrangement with Safeway Trails whereby Transcontinental seeks to purchase all of the outstanding stock of that corporation. Proper application for authority to so purchase this stock has been made to the Interstate Commerce Commission and is now pending before that Commission.

As you doubtless know, by law Transcontinental is not permitted to take control of Safeway Trails, Inc. or any of its affairs or participate in any way in its management policies or decisions until such time as it shall have received authority from the Interstate Commerce Commission to do so. If it did, Transcontinental would jeopardize its position before the Interstate Commerce Commission.

In the light of the foregoing, I am sure you agree that if Transcontinental were at this time to inject itself into the dispute between the Congress of Racial Equality and Safeway Trails, Inc., it would be doing so in violation of the Interstate Commerce Act, and would jeopardize its position before that Commission. Consequently, it is my feeling that we cannot do so until such time as the Interstate Commerce Commission shall have approved our application to control Safeway.

With kindest personal regards, I am

Sincerely,

Warren A. Goff

Warren A. Goff
General Counsel

WAG:bc

Philadelphia — Safeway Trails

LAW OFFICES
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TWELFTH FLOOR PACKARD BUILDING
PHILADELPHIA 19102

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STEVEN A. ARBITTIER
EDWARD M. GLICKMAN
BARRY WAXMAN

HORACE STERN
MORRIS WOLF
OF COUNSEL

GORDON A. BLOCK
1918-1964

FEB 8 REC'D

COPY

February 4, 1965

James L. Williams, Chairman
Congress of Racial Equality
2229 North Broad Street
Philadelphia, Pennsylvania 19132

Re: NAACP and Safeway Trails, Inc.
v. CORE, et al.

Dear Jim:

Still no word from the Court.

This means that the preliminary injunction is still in effect and so is our agreement that there will be no more than 12 persons picketing at any one time including those handing out leaflets.

If you do picket, please make certain to observe these rules strictly and maintain a list of all persons who are picketing or handing out leaflets indicating the time of arrival and time of departure.

I will be in touch with you as soon as I receive the ruling of the Court.

Sincerely,

BC

Burton Caine

BC/fo
cc: Gilbert M. Cantor, Esquire
Carl Rachlin, Esquire

February 8, 1965 .

Mr. Paul Nagle
Office of Contracts and Compliance
Post Office Department
Washington, D.C.

Dear Mr. Nagle:

Enclosed are the various statements and documents to support our charges of a distinct and continuous pattern of racial discrimination on the part of Safeway Trails Inc. Also enclosed are the series of communications between Madison Jones, Executive Director of the New York City Commission on Human Rights and Marvin E. Walsh, Executive Vice-President of Safeway Trails Inc. The purpose of their inclusion is to point out Mr. Jones' conclusion that the "firm violated the initial understandings as regards upgrading opportunities" and the generally derogatory phraseology of Mr. Walsh's communications.

Also, we consider it of great urgency to point out that three of the complainants are still employed with the company, and are presently suffering harassment from company officials who have threatened to fire them if they are involved in any more civil rights complaints. As you can imagine, although unwilling to give up their struggle, these men are under great emotional stress. We assured them that your organization was fully apprised of these recent incidents and that the company would be made aware of your concern. We assume that this present series of incidents--see cases of Griffin and Barnes--will indicate to you, as it has to us, that the company's discriminatory policy has not been changed.

We sincerely hope that the Post Office Department will review the record and assume its obligations under the appropriate Executive Order. The Federal Government and the Department will be judged publicly on the basis of its response to continuous discrimination by contract carriers.

We will bring all subsequent information which materializes to your immediate attention. Anticipating the successful settlement of this matter,

We remain,

James Farmer, National Director

Carl Rachlin, General Counsel

Safeway Trails

February 9, 1965

Gilbert M. Cantor, Esq.
1300 Two Penn Center Plaza
Philadelphia 2, Pennsylvania

Burton Caine, Esq.
Packard Building
15th and Chestnut
Philadelphia, Pennsylvania

Dear Gil and Burt,

Your brief was excellent as I know, likewise, was your argument. If you like, at any future proceedings I shall be present with you.

Eric Mann and I met with Mr. Nagle, head of contract compliance at the Post Office. They appeared seriously interested in the questions raised by us as to Safeway Trails, as well as your case.

I am sure you will advise me of the decision. Who appeared for the Company?

Regards,

Carl Rachlin
General Counsel

CR:jp

cc: James Williams
    Lou Smith

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HORACE STERN
MORRIS WOLF
OF COUNSEL

GORDON A. BLOCK
1918-1964

February 11, 1965

Carl Rachlin, Esquire
Congress of Racial Equality
38 Park Row
New York, New York 10038

Re: NAACP and Safeway Trails
v. CORE, et al.

Dear Carl:

I am enclosing a copy of the Answer which we filed in the above case. Plaintiff is required to respond to the New Matter (paragraphs 19-23) within 20 days. As you can see, paragraphs 19, 20 and 21 refer to each of the bases of the temporary injunction and require plaintiff to state under oath whether it claims there is any basis in fact for the alleged unruly conduct, etc.

James Williams told me yesterday that James Farmer will be in town tomorrow, February 12, and the three of us will meet to discuss this case. One aspect that I want to give attention to is whether we want to engage in extensive discovery to determine just what Trailways' hiring policies are. This would involve some expense, especially if we were required to go to Washington to take depositions of the executive officers of Trailways. If you have any thoughts on this matter, please let me know.

Sincerely,

Burton Caine

BC/fo
Enclosure
cc: Gilbert M. Cantor, Esquire
Mr. James O. Williams

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and SAFEWAY TRAILS, INC.	C. P. NO. 2
Plaintiffs	DECEMBER TERM, 1964
v.	
CONGRESS OF RACIAL EQUALITY, INC. and JAMES O. WILLIAMS and JOHN BRYANT, JR. and JOY BROWN	NO. 1576
Defendants	IN EQUITY

ANSWER

1. Admitted.

2. The identity of National Association for the Advancement of Colored People is admitted. Defendants further aver that NAACP has withdrawn as a plaintiff for the reason that its participation in this lawsuit was totally unauthorized by NAACP.

3. Denied. Congress of Racial Equality, Inc. is a New York Corporation, as alleged, but it is denied that it is doing business in Philadelphia. It is further alleged that Philadelphia CORE, an unincorporated association which is completely autonomous and independent and not subject to the control

of defendant New York corporation, has an office in Philadelphia at 2229 North Broad Street.

4. It is specifically denied that any of the named individual defendants are agents, servants, or employees of defendant Congress of Racial Equality, Inc. On the contrary, defendants Williams, Bryant, and Brown are officers and members of Philadelphia CORE, a completely separate and independent organization as more fully alleged in paragraph 3 above, which paragraph is incorporated by reference. It is denied that Stanley Branche is connected in any way with Philadelphia CORE or with defendant Congress of Racial Equality, Inc., and it is further denied that he is a defendant in this case.

5. Admitted.

6. Defendants are without knowledge or information sufficient to form a belief as to the allegations of paragraph 6 and the means of proof are within the exclusive control of NAACP and Safeway Trails, Inc., both of whom are hostile parties. Moreover, the allegations of paragraph 6 are irrelevant; but, if deemed relevant, defendants demand strict proof at the trial.

7. The allegations of paragraph 7 are too vague to require a response. Moreover, they are irrelevant. Further answering, defendants deny that any of them are engaged in any conspiracy whatsoever either to upset any "harmony" allegedly existing between plaintiff and former plaintiff, or otherwise.

8. It is admitted that Philadelphia CORE, not defendant

Congress of Racial Equality, Inc., sent the letter which is attached to the complaint as Exhibit A. The letter speaks for itself and the allegations of paragraph 8 characterizing the contents thereof are denied.

9. The allegations of paragraph 9 are specifically denied. On the contrary, on December 31, 1964, Philadelphia CORE, not a defendant, and defendants Williams, Bryant and Brown, engaged in lawful, peaceful picketing upon the public pavement in front of plaintiff's bus terminal, 13th and Arch Streets, Philadelphia At no time did Philadelphia CORE, or any defendant during the course of the picketing assemble unruly persons, hinder or molest any passengers or others, or stop or interfere with the movement of buses.

10. The allegations of paragraph 10 are specifically denied for the reasons set forth in paragraph 9 above which are incorporated by reference.

11. The allegations of paragraph 11 are specifically denied. Moreover, Philadelphia CORE has conducted no activities with respect to plaintiff Safeway Trails, Inc., in New York City or Washington, D. C.

12-14. The allegations of paragraphs 12-14 are specifically denied for the reasons set forth in paragraph 9 which are incorporated by reference.

15. Defendants do not deny the allegations of paragraph 15 although the allegations are irrelevant.

16. It is denied that any of the defendants or Philadelphia CORE or any representative thereof has ever threatened plaintiff Safeway Trails, Inc. with breaches of the peace, or with interference with its legitimate business pursuits, or that any such activities have taken place in the past.

17. Denied that any defendant or Philadelphia CORE, has committed any legal wrongs against plaintiff, or threatened to do so.

18. It is denied that plaintiff bus company has suffered any loss or harm, irreparable or otherwise and that plaintiff is entitled to any relief from this Court. It is further denied that plaintiff's remedy at law is inadequate.

NEW MATTER

19. The picketing of plaintiff bus company on December 31, 1964 referred to in the complaint was peaceful, orderly and was not unruly.

20. During the course of the picketing referred to in paragraph 19 above, no passengers or others were hindered or molested.

21. During the course of the picketing referred to in paragraph 19 above, none of plaintiff's buses were stopped nor was there any interference with the movement of plaintiff's buses.

22. The picketing of plaintiff bus company referred

to in the complaint was an exercise of freedom of expression protected by the due process clause of the Fourteenth Amendment to the Constitution of the United States and Article 1, §7 of the Pennsylvania Constitution.

23. Any agreement between plaintiffs as alluded to in paragraph 6 of the complaint, even if made, would be insufficient to prevent peaceful picketing of plaintiff bus station of the type carried on in this case.

WHEREFORE, defendants request that the application for injunction be denied and complaint dismissed.

s/ Burton Caine
Burton Caine
12th Floor Packard Building
Philadelphia, Pennsylvania 19102

s/ Gilbert M Cantor
Gilbert M. Cantor
1300 Two Penn Center Plaza
Philadelphia, Pennsylvania 19102

February 10, 1965

COMMONWEALTH OF PENNSYLVANIA :
: SS.
CITY OF PHILADELPHIA :

JAMES O. WILLIAMS, being duly sworn according to law deposes and says that he is one of the defendants in this case and that he takes this affidavit on his own behalf and on behalf of the remaining defendants having been authorized to do so; and that the facts set forth in the attached Answer and New Matter are true and correct to the best of his information, knowledge and belief.

s/ James O. Williams
James O. Williams

Sworn to and subscribed
before me this 10 day
of February 1965.

s/ Concetta M. Falasco
Notary Public

My commission expires:
Sept. 24, 1966

Safeway Trails

February 14, 1965

Mr. Louis S. Smith
Northeast Regional Director
Congress of Racial Equality
48 West 125th Street
New York, New York

Dear Lou:

Just to fill you in on Philadelphia CORE and Safeway Trails, this is our program for the immediate future:

1) Philadelphia CORE has filed an Answer to the court Injunction. (Copy will be forwarded.)

2) Mr. Farmer has met with our lawyer and been brought up to date.

3) Philadelphia CORE intends to put Safeway Trails officials and employment records under subpeona. This is a chance to make a complete discovery of their past and present employment records under oath.

Philadelphia CORE requests the following action on regional's part.

1) Involvement of the chapters in New York, Jersey City, Trenton, Baltimore, and Washington, to the extent of ascertaining the employment patterns in those terminals.

2) Our lawyer needs any sworn statements from present or former employees on any form of discrimination, as soon as possible from the cities listed.

3) A meeting with as many chapters as possible to draw up a demand based on their findings locally as a basis for a systemwide quota.

We may go to court any time in the next three weeks, so time is important.

Yours in Freedom,

JOW
jb

James O. Williams
Chairman
Philadelphia CORE

cc: Eric Mann
Carl Rachlin, Esq.

William Lee Akers
ATTORNEY AT LAW

(215) LOCUST 8-1670

SUITE 805
ONE EAST PENN SQUARE
PHILADELPHIA 7, PENNSYLVANIA

February 15, 1965

FEB 16 1965

Carl Rachlin, Esq.
c/o CORE
38 Park Row
New York, New York 10038

Re: Legal Conference

Dear Carl:

I called him right away

I received preliminary notice of the conference back in December but have had no further information. I would like the details in case I can get away. We have just finished depositions in the Mississippi Contested Election matter so I am behind as usual.

The Trailways affair has apparently collapsed. Philadelphia CORE has no heart for picketing after the Northeast Regional office pulled out of the project they started. Burt Caine and Gil Cantor argued to dissolve the injunction. No decision yet. Sit-in case is sitting waiting a decision also.

Hope to see you this weekend.

Very truly yours,

Bill

William Lee Akers

WLA/nk

Dear Bill
Please come to the conference
I am anxious to see you:
Regards

February 15, 1965

Burton Caine, Esq.
Wolf, Block, Schorr and Solis-Cohen
Twelfth Floor Packard Building
Philadelphia, Pennsylvania 19102

Dear Burt:

Thank you for your letter of the 11th inst. Your Answer is fine. I am intrigued by "New Matter;" we still use "affirmative defenses" or some such. The Post Office is watching your case very carefully and I am in favor of the best possible case. Would it be possible to use some of our Washington lawyers to help on this to save you time? Let me hear from you. If you think it worthwhile I would be pleased to see you in Philadelphia.

By the way, do you think that you might want to raise the question of pre-emption of the National Labor Relations Act as amended, since this is an employment problem? This was peaceful picketing or leafleting; what is, then, the interest of the State? If it is the question of the NAACP contract isn't that even more clearly a matter for the NLRB? What do you think?

Regards,

Carl Rachlin
General Counsel

CR:jp

cc: Mr. Eric Mann
Gilbert M. Cantor, Esq.
Mr. James O. Williams
Mr. Louis Smith

February 16, 1965

William Lee Akers, Esq.
Suite 805
One East Penn Square
Philadelphia 7, Pa.

Dear Bill:

Please come to the conference. I am anxious to see you.

Regards,

CR/jp

Carl Rachlin
General Counsel

Office of the Postmaster General
Washington, D.C. 20260

February 18, 1965

Mr. James Farmer
National Director
Congress of Racial Equality
38 Park Row
New York, New York 10038

Dear Mr. Farmer:

Thank you for your letter of February 8, 1965 and the documents concerning Safeway Trails, Inc.

At the present time we are reviewing the employment practices of Safeway Trails, Inc. as they pertain to Equal Employment Opportunity. The review will include visits to the Company's facilities, including New York City where many of the difficulties pointed out by Mr. Mann and Mr. Rachlin have occurred.

Let me assure you that the Post Office Department intends to fulfill completely its obligations under Executive Orders 10925 and 11114. We will appreciate your continuing cooperation toward that end.

Sincerely yours,

Paul A Nagle

Paul A. Nagle
Deputy Contracts Compliance Officer

cc:

Mr. Carl Rachlin, Esq.
General Counsel
CORE

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BARRY WAXMAN

HORACE STERN
MORRIS WOLF
OF COUNSEL

GORDON A. BLOCK
1918-1964

February 25, 1965

Carl Rachlin, Esquire
CORE
38 Park Row
New York, New York 10038

Re: Safeway Trails, Inc.

Dear Carl:

Pursuant to our telephone conversation yesterday, I am enclosing a set of proposed interrogatories to be propounded to Trailways. It is our present thought to file these and at the same time serve a notice for oral depositions at a time shortly after answers to the interrogatories are due.

Jim Williams of Philadelphia CORE tells me that Eric Mann can give me specific information on Trailways' discrimination. I would like to have this before embarking upon discovery and most importantly, I would like to know the names of all persons in Trailways who should be examined. You said that you would ask Mr. Mann to get in touch with me.

As I told you, Judge Alessandroni has asked counsel to meet with him tomorrow, February 26 at 4:30 P.M. We don't know what the Judge has in mind, but, as we discussed, if it appears that he is contemplating deciding against us, we might raise the question of pre-emption and the NLRB.

Sincerely,

BC

Burton Caine

BC/fo
Enclosure
cc: Gilbert M. Cantor, Esquire

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and SAFEWAY TRAILS, INC.	:	C. P. NO. 2
Plaintiffs	:	DECEMBER TERM, 1964
v.	:	
CONGRESS OF RACIAL EQUALITY, INC. and JAMES O. WILLIAMS and JOHN BRYANT, JR. and JOY BROWN	:	No. 1576
Defendants.	:	IN EQUITY

DEFENDANTS' INTERROGATORIES TO PLAINTIFF, SAFEWAY TRAILS, INC.

Pursuant to P. R. C. P. 4006, defendants propound the following interrogatories to be answered by plaintiff separately and fully in writing under oath and plaintiff shall serve answers upon defendants within twenty days after service hereof:

1. Give the state and date of incorporation of plaintiff, Safeway Trails, Inc., and the location of its executive offices.

2. State the name, date of incorporation, ~~and~~ place of incorporation and principal place of business of each company affiliated with plaintiff and operating bus lines in the United States and state the areas or sections of the country in which

each operates.

3. Are any or all of the companies set forth in answer to Question #2 commonly owned or commonly controlled, or both? If so, give the names of persons, firms or companies owning and/or controlling two or more of the companies listed in answer to Question #2.

4. Give the names and addresses of the officers and directors of plaintiff and each of the other companies set forth in answer to Question #2 above.

5. List the names and addresses of all Negroes employed or connected with plaintiff or any other company set forth in answer to Question #2 above in any capacity whatsoever and state as to each such person the following:

(a) The position or job classification and the length of time in each such position or job.

(b) Date of hiring and date of each promotion, indicating the position or positions attained.

(c) The name of previous employer, if ~~one.~~ known,

(d) If the previous employer was one of the affiliated companies, set forth in answer to Question #2, state the length of time employed by such affiliated company and each position held by employee with such affiliated company.

(e) Salary ~~o~~f r each position for the last two years.

6. List the names and addresses of all Negroes employed by plaintiff or any affiliated company listed in answer to Question #2 who have been discharged or resigned within the past two years and, as to each, state:

(a) The job classification or position at the time of termination of employment and indication of the length of time in that or previous classifications or jobs.

(b) Date of hiring and date of each promotion, indicating the position or positions attained.

(c) Reasons for discharge or resignation if known.

(d) If the previous employer was one of the affiliated companies set forth in answer to Question #2, the length of time employed by such affiliated company and each position held by employee with such affiliated company.

(e) Salary for each position or job during the two years prior to discharge or resignation.

7. Describe in detail the record or records from which the answers to Questions #5 and #6 were obtained and the physical location of such records.

8. What is the name and address and job classification of each person or persons in plaintiff and affiliated companies who has determined the policy of these companies or participated in the determination of policy with respect to the hiring of Negroes/ for the last 2 years.

9. Has plaintiff or any affiliated companies submitted to any governmental or semi-governmental body or agency any reports in the past two years as to its policy in hiring and promotion of Negroes or the part of Negroes employed by such company.

10. If the answer to Question #9 is in the affirmative, state the name of such governmental body or agency and identify all the correspondence, reports or writings whatsoever between plaintiff or any affiliated company on the one hand and such governmental body or agency on the other.

11. State the name, address and job classification of all persons in Safeway Trails, Inc. and NAACP who participates in the negotiations referred to in Paragraph 6 of the Complaint.

12. State the terms of any agreement or agreements reached as a result of the negotiations set forth in Paragraph 6 of the Complaint and state whether such agreement or agreements were reduced to writing.

13. Identify all letters, papers, or writings of any nature whatsoever of which plaintiff has knowledge, which contain

the terms or, or which refer in any manner to, the negotiations and/or agreement referred to in Paragraph 6 of the Complaint, including, but not limited to any correspondence between plaintiff and NAACP and any intra-office or inter-office correspondence of plaintiff and/or any of its affiliated companies.

Defendants reserve the right to propound further interrogatories as may be appropriate.

Respectfully submitted,

Burton Caine
12th Floor Packard Building
Philadelphia, Penna. 19102

Gilbert M. Cantor
1300 Two Penn Center
Philadelphia, Penna.
Attorneys for Defendants.

Dated: , 1965.

LAW OFFICES
WOLF, BLOCK, SCHORR AND SOLIS-COHEN
TWELFTH FLOOR PACKARD BUILDING
PHILADELPHIA 19102

LOcust 3-8600

D. HAYS SOLIS-COHEN
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ALFRED L. WOLF
ROBERT B. WOLF
HELEN SPIGEL
MORRIS L. FORER
FRED WOLF, JR.
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JOSEPH BRANDSCHAIN
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MICHAEL VON MOSCHZISKER
FRANKLIN POUL
DANIEL C. COHEN
BURTON CAINE
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JAMES N. RUDOLPH
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JOSEPH M. MANKO

HORACE STERN
MORRIS WOLF
OF COUNSEL

GORDON A. BLOCK
1918-1964

MAR 2 1965

March 1, 1965

Mr. James Williams
Congress of Racial Equality
2229 North Broad Street
Philadelphia, Pennsylvania 19132

COPY

Re: Safeway Trails, Inc.

Dear Jim:

The meeting which Judge Alessandroni called for last Friday afternoon was to try to dispose of this case in an amicable way. The judge seemed inclined to the position that the present injunction which is based upon unruly conduct probably cannot stand but that if there is no evidence of discrimination, perhaps there ought to be an injunction against all picketing.

As a result of the meeting, Trailways will give us a list of all Negroes hired by the bus lines so that we can decide for ourselves whether there is discrimination. When I get the list, I will want to go over it with you.

In the meantime, I am sending a copy of this letter to Carl Rachlin with a request that either he or Eric Mann let me have whatever information they have on discrimination in hiring or promotions so that we can be prepared to check this information against the Trailways' list.

Sincerely,

Burton Caine

BC/fo
cc: Carl Rachlin, Esquire
Gilbert M. Cantor, Esquire

CONGRESS OF RACIAL EQUALITY

PHILADELPHIA CORE

working to abolish racial discrimination by direct nonviolent methods

2229 N. BROAD ST.
PHILADELPHIA 32, PA.
ZIP CODE 19132
POplar 5-2229
AREA CODE 215

James O. Williams
CHAIRMAN

John Bryant Jr.
VICE-CHAIRMAN

Joy Brown
SECRETARY

Doris M. Taylor
TREASURER

EXECUTIVE
MEMBERS AT LARGE
Arthur Alston
Stanley Diamond
Benjamin Jones
Iris Jones
Joseph Smith

MAR 3 1965

March 1, 1965

Carl Rachlin, Esquire
Congress of Racial Equality
38 Park Row
New York, New York 10038

Dear Carl:

Philadelphia CORE is still waiting for a court date or a statement from the judge who signed the original injunction.

Eric Mann, the Field Secretary from the Regional Office, told me he had some statements from Trailway employees and persons who had tried to get jobs at Trailway.

I wish you would look into this information and see if it would help our cause against Trailway.

Time is important, because we don't know when we will have to go to court. Some testimony indicating discrimination would help.

Yours in Freedom,

James O. Williams
James O. Williams
Chairman
Philadelphia CORE

JOW
jb

a national organization with affiliated local groups working

CONGRESS OF RACIAL EQUALITY
CORE

to abolish racial discrimination by direct, nonviolent methods

38 PARK ROW
NEW YORK 38, NEW YORK
COrtlandt 7-6270

James Farmer
national director

ADVISORY COMMITTEE
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CORElator editor

STAFF
Richard Haley
associate
Gordon Carey
assistant
Carl Rachlin, Esq.
general counsel
James McCain
director of organization
Marvin Rich
community relations director

March 3, 1965

Eric Mann
1718 E. XXXXX.
Baltimore St.
Baltimore, Maryland
301 276-7517

If not there (301) 276-3096

If not there message can be left with Jim Griffin

(301) 233-6229

March 4, 1965

Burton Caine, Esq.
Packard Building
Twelfth Floor
Philadelphia 19102, Penna.

Re: Safeway Trails, Inc.

Dear Mr. Caine,

Eric Mann has requested that I send you copies of statements by employees of Safeway Trails.

Apparently these, together with the fact sheets sent to you some time ago, should give you the information you require.

Mr. Mann can be reached in Baltimore at 1718 E. Baltimore St. The number there is (301) 276-7517. If not there at (301) 276-3096. Or a message can be left for him with Jim Griffin at (301) 233-6229.

Mr. Rachlin is out-of-town this week but will be back in the office next week.

Very truly yours,

Hannie de Leeuw
Sec'y to Carl Rachlin

Enclosures/

cc: James O. Williams
Philadelphia CORE

JOHN F. NAULTY
ATTORNEY AT LAW

1130 LAND TITLE BUILDING
BROAD AND CHESTNUT STREETS
PHILADELPHIA 10, PA.
LOcust 8-5116

March 22, 1965

Honorable Eugene V. Alessandroni
Room 642 City Hall
Philadelphia, Pa.

Re: Safeway Trails, Inc. v. C.O.R.E.
C.P. NO. 2, Dec. Term, No. 1576

Dear Judge Alessandroni,

Enclosed please find the complete list of Safeway employees. You will note that there are numerous negroe employees. The list reflects what has been occurring in the Safeway system. Negroes have been advancing to higher job classifications as openings become available.

Safeway is in no position to hire outside negroes. The reason is the existence of a contract with the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America for both terminal and garage employees. In both contracts there is a seniority provision. I have attached this provision in Exhibits 'A' and 'B' to the employment lists, along with the wage scales for the employees.

As a job opening in a higher classification becomes open, employees can bid on it. Seniority will determine who receives the job, not the color of one's skin.

I would also point out to your Honor that since Safeway's agreement with the N.A.A.C.P. became effective in January of 1964, Safeway hired 57 new bus drivers. Over 30% or 18 of the bus drivers were negroe.

I do not think that this list in any way indicates that Safeway is following a policy of discrimination.

I hope that this list meets with your Honor's requirements.

Very truly yours,

John F Naulty
JOHN F. NAULTY

C.C. Burton Caine, Esq.
Hilbert Cantor, Esq.

EMPLOYMENT LISTS

of

SAFEWAY TRAILS, INC.

including:

Coach Operators
Terminal Employees
Garage Employees

COACH OPERATORS EMPLOYED
ON SAFEWAY TRAILS, INC.
JANUARY 1, 1964 TO DATE

J. T. Tyson
R. D. Dole
R. D. Weaver
N W. E. Hawkins
J. T. Collins
D. Hancock
N T. Michel
C. G. Kirk
F. D. Rock
W. R. Robertson
H. Magersupp
L. Schwind
C. R. Majors
R. C. Matthews
W. D. Shoemaker
R. L. Stroupe
N J. W. Peterson
M. K. Miller
N N. W. Mason
L. G. Phelps
A. R. Dashiells
R. A. Wood
G. L. Pinnen
N C. Graham
N R. Jessup
N W. Little
N C. Green
N N. Jones

D. G. Kreiger
N J. Berkheimer
G. L. Carlheim
J. R. Simon
D. E. Conley
L. E. Dorsey
K. H. Wright
A. L. Snead
O. J. Holcombe
N J. K. Davis
N M. A. Hopkins
N L. D. Brown
J. J. Giles
W. A. Smith
A. G. Czeczuga
T. V. Dye
M. E. Bradley
C. W. Jones
R. E. Kincaid
B. R. Tew
N J. White
J. A. Gish
J. T. Collins
G. A. Johnson
N M. Gualls
N J. Hammock
N E. Blount
N L. W. Logan

TERMINAL EMPLOYEES

GENERAL MANAGER NORTHERN DIVISION

C. Lagner

ASS'T. GENERAL MANAGER NORTHERN DIVISION

J. Worth

ASS'T. TERMINAL MANAGER

M. Drugan

SUPERVISORS :

J. Gregory
J. Sumey
R. Rexroad
M. T. Berry
Fred Mitchell
Warren McQuesten
Bobby Martin

SALES DEPARTMENT :

L. W. Harlow
W. C. Madtes
James Davis
C. A. Mills
Doris Greathouse
Margaret Brown

TOUR OFFICE:

Oemta Aleshire
M. Miller

AUDIT: N

Darrell Taylor N
Helen Davenport
Richard Gibson
E. Firth
J. Pascale
H. Elks,Jr.
K. Hessenauer

OFFICE:

J. Evans
C. Adams
E. Fowler
K. Fine
E. Chestnut
W. Coverston
D. Herbert
B. Wkillington
J. Pugh

DISPATCHERS:

FredThomas
C. Weidhass
Robert Lee
B.T.Stainback
Ronald Jolley
Robert Dowdle
T. V. Swansinger
William Trail
Peter Doyle

TICKET AGENTS: ($2.87 per hr.)

Mary Morris
James Preddy
T.D.Mills
Charles Budd
Kenneth Himsbright
Harry Myer
Devon Nicholson
Bobby England
Robert Fulmer
David Banter
Charles Brand
Tommy Bland
Kirk Edwards
Willis Finney
John Martin
V.Feoli
W. Campbell
G. Herzog
N. Morris
M. Drake

TERMINAL EMPLOYEES:

TICKET AGENTS:

W. Geldmacher
R. Berger
A. Brandt
R. Buschner
J. Connors
J. Cook
E. Devlin
T. Evans
A. Gill
E. Hoy
W. Knight
D. Peterson
R. Schafer
J. Schlitz
K. Smith
M. Wilhelm
F. Yeager
V. Handyside
N C. Ford
M. Cullison
M. Elza
E. Jones

EXPRESS AGENTS: ($ 2.61perhour)

N S. Arthur
N J. Bundy
A. Hermandez
C. Howell
T. Monahan
N J. Robinson
M. Smakosz
E. Vernon
N C. Brunson
N T. Waddell
R. Mansfield
T. Rodriguez
N J. Brown
N J. Richardson
N L. Clark
N A. Merritt
R. Hood
E. Bianco
R. Bennett
N P. Reddick
J. Villaviencio
N W. McCrea
N James Clark
N C. Hammonds
N S. Taylor
N D. Jackson
N M. McHenry
N J. Penn
N J. Brown
C. Nagle
R. Penick

EXPRESS AGENTS :

N A Daniels
N W. Thornton
N N. Quiones
N N. Royall
C. Paris
J. Thomas
R. Proctor
W. Keith
N H. Malone
D. Ratterree
R. Latka
B. Bailey
R. Eddy
G. Mills
N H. Jefferson
J. Gatton
E. Bonham
N W. Chapman
N C. Robinson
N W. Patton
N W. Penn
N W. Roberts
N A. Ellis
N R. James
N O. Smith
N H. Smith
N. G. Wilson
R. Leonard
E. McClain

TERMINAL EMPLOYEES:

INFORMATION CLERKS: ($2.55 per hour)

	D. Blewett
	F. Bradford
N	J. Briggs
	L. Davis
	M. Dorris
	R. Fetzer
	L. Knapp
	B. Olsen
	L. Rugel
	G. Semese
	A. Wispert
N	Y. Chin
	E.Wertheim
	K. Shefter
N	M. Johnson
	L. Wagher
	P. Stainback
	P. Carroll
	M. Dross
	P. Hines
	F. Hawle
	M. Hall
N	J. Rouse
	T. Di Martino
	P. Magersupp
N	G. McGowan
	J. Pfaifer
	L. Newman
	J. Mullins
	M. Potter
	I. Sites
	P. Hugerth
	M. Spaunhausot
	W. Moore
	P. Runyon
	B. Fulmer
	J McNeely
	C. Verbase
	D. Larsen
	G. Anderson
	S. Watts
N	M. Rudison
	J. Welch
	C. Nukles
	P. Murphy
N	J. Comfort
	A. King
	J. Myer
	K. Shaffer
	C. Blanchard
	E. Gulliere
	M. Hansen
	J. Reinhardt
	R. Ruggeris

PORTERS ($2.21 per hour)

N	H. Quinn
N	C. Gamble
N	R. Dildy
N	J. Smith
N	R. Alston
N	L. Burnett
N	L. Davis
N	W. Dock
N	H. Fortune
	D. Reyers
N	J. Sullivan
N	G. Turner
N	T. Veasey
N	R. Vinis

JANITORS AND MAIDS ($1.97 per hr)

N	J. Faun tleroy
N	T. Williams
N	A. Fields
N	R. Peterson
N	R. Powell
N	W. Washington
N	O. Carpenter
N	I. Baines
N	M. Reynolds
N	B. Clanton
N	V. Ham
N	E. Shorter
N	L. Aldridge
N	T. Anderson
N	J. Brooks
N	S. Brooks
N	N. E. Jones
N	H. Kelly
N	Lenella Ruffin

GARAGE EMPLOYEES

FOREMAN:

R. D. Faulkner
N S. Waters

ELECTRICIAN:

A. Perretta

MECHANICS AND MECHANICS HELPER

S. Bartowzewicz
R. Boan
N F. Briggs
C. Calvert
C. Gibson
N M. Jones
K. Jones
E. LePage
J. Prettyman
H. Mikelson
J. Notte
F. Panorello
E. Vincent, Jr.
H. Wells
N H. Hoyos
R. Johnston
N P. Armenti
N A. De Filippis
C. Headley
C. Hurley
J. Rich
N R. Torrens
E. Debes
M. Divers
R. Dinon
D. Ervin
M. Feathers
N P. Vasquez
N J. Vega
N. Walker
N L. Witherspoon
F. Cornwell
N Brunson Rush
R. Oldenburg
H. Allen
N L. Anderson
E. Aten
R. Aylor
W. Bateman
W. Beard
C. Becker
R. Bee
P. Birchfield
J. Bratton
J. Kattell
J. Clark

B. Cregger
R. Curtis
L. Cyrus
R. Darnell
R. Drinosky
H. Ebersole
M. Eutsler
F. Gilkerson
I. Gilkerson
R. Hackworth
J. Hayes
M. Hensley
N R. Jackson
J. Jones
W. Lambert
A. Lawson
L. May
W. Mellin
C. Miles
J. Mitchell
E. Mudiman
J. McDonald
C. McWhirter
E. Nicholson
L. Owens
W. Painter
P Perry
F. Richards
M. Shaeffer
W. Schrimscher
N J. Scott
R. Smith
R. Snow
W. Snow
D. Stoneman
F. Sumpter
R. Tamossia
C. Theimer
R. Vaughan
N A. Walker
N R. Williams
A. Smith
J. Farmer

SENIOR FLOORMAN ($2.56 per hour)

N M. Cartledge

FLOORMEN ($2.46 per hour)

N G. D. Fleminge
N A. Draper
E. Hofknecht
N C. Howard
N F. Jones
D. Teager
N C. Lopez
T. O'Malley
P. Pecikonis
M. Perretta
J. Ranieri
S. Rosania
A. Suwald
N A. Thoms
N F. Williams
N B. Brock
N K. E. Brown
N N. D. De Brew
N H. L. Davis
H. Genti
S. Mangum
N M. Robinson
N J. Walker
N R. Timberlake
N W. Wilson
N W. Blount
N F. Bullard
N R. Bullock
N S. Bynum
N D. Clemons
R. Ervin
D. Fryar
J. Fulmer
N C. Gibson
R. Gilkerson
N C. Hull
N D. James
N E. Jeter
N O. Lasseter
N L. Marshall
N C. Meriedy
N L. McKenzie
N H. Payton
N S. Rice
L. Sims
N J. Smith
R. Stephens
N E.Taylor
N J. Thomas

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P. Johnston
E. Doe
R. Ripple
R. Bowers
T. Campbell
J. Cochran
T. Cochran
G. Collins
R. Curtis
J. Everidge
W. Heimerline
Tyle Hill
W. Howard
J. Moore
S. Sheehan
N L. Taylor
W. Backer
R. V. Campbell
J. Chiumento
M. Trivett
J. Shaw
R. Dana

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TREASURER:

Davis S. Marshall

ASS'T. TREASURER:

S. L. Hash
M. L. Miemietz
T. Wilson

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ASST. TO EXEC. VICE PRESIDENT:

Ferris O. Garrett

TRAFFIC ADVISOR:

W. A. Edens

GEN. TRAFFIC MANAGER:

L. L. Browning

ASST. TRAFFIC MANAGER:

Roy E. Ownby

SEC'Y. TRAFFIC DEPARTMENT :

Shelby J. Hoy

TOUR DIRECTOR:

E. G. Markley

OPERATING MANAGER:

L. Hilton Warwick

SECY. OPERATIONS :

Eileen S. Glazier

DIRECTOR OF SAFETY AND CLAIMS:

W. D. Basinger

SALES AUDITOR :

Sarah Swarr

ASS'T. SALES AUDITOR :

Sue Conard

AUDIT CLERK:

Genevieve Kent
Charlotte Warwick
Paula Bell
Marie M. Cyrus

ADMINISTRATIVE ASSISTANT:

Margaret Roethlein
M. L. Burdett

SUPERVISOR OF REVENUE :

M. D. Brady

REVENUE CLERK:

Rowena Daniel
Lorna S. Godfrey

LOG CLERK

B. G. Edens
Wilmer W. Watson

PAYROLL SUPERVISOR :

Richard A. Trivett

KEY PUNCH OPERATORS:

Margaret A. Keyser
Edith V. Markley
Mary E. Williams

SUPPLIES:

W. M. Dingee

REVENUE CLERK:

Harriet V. Conaway
Evelyn V. Watson
Gladys Schrimscher

ACCOUNTANT:

LeRoy Hindman,Jr.

ACCOUNTANT CLERK

W. C. Moore
Sandra Peters
Garnett C. Sluss

ACCOUNTANT TRAINEE :

W. C. Walsh

STENOGRAPHERS:

Joyce Bowie
Grace Heaton

MACHINE OPERATOR:

Walt Follin
W. R. Howard
R. E. Mullins

SUPERVISOR:

Martin J. Price,Jr.

REFUND CLERK:

M. E. Maller

RATE CLERKS :

Irene B. Crystal
Alfred Revermann
Reva Longmire

EXPRESS & WAYBILL CLERK :

W. W. Hindman
N. Edward Bland

POSTING CLERK:

Barbara Wilkinson
Lana Susko

RECEPTIONST :

Beverly J. Steadman

INTERLINE CLERK:

Mettie Psarakis

CLERK:

Dorothea Garrett

SECRETARY TO PERSONNEL:

Ireta P. Carnifan

SAFETY CLERK:

Joseph H. Miller

TYPIST :

Corlass Raby

MESSENGER:

A. J. Volio

BAGGAGE CLERKS:

B.J.Roethlein
[illegible]

EXHIBIT 'A' ----- A Portion of the

AGREEMENT between

SAFEWAY TRAILS, INC.

and

AMALGAMATED ASSOCIATION OF
STREET, ELECTRIC RAILWAY AND
MOTOR COACH EMPLOYEES OF AMERICA
DIVISION 1112

(Effective June 24, 1963)

Article IV : Seniority
Appendix A : Wages

to the Association of the proposed discharge, except in case of insobriety, misappropriation of funds, property or larceny. A hearing and investigation shall be held within ten (10) days. At the hearing the employee may be represented by a representative of the employee's own choosing, who will be permitted to question witnesses and otherwise represent the individual involved so far as the employee's interests are concerned.

SECTION 5. When discipline is rendered or discharges are ordered, same will be done by the General Manager, Terminal Manager, or their properly designated Representative.

ARTICLE IV

SENIORITY

SECTION 1. The length of service of an employee in his classification shall determine the seniority status of the employee. The principle of seniority shall govern and control all cases of promotion, transfer, or decrease, or increase of the working force within each classification at each terminal point. In case of a reduction of working force effecting any classification at any or all terminal points, system seniority will prevail and classification shall be established under two categories as follows:

Ticket and Information category shall include:

- Starter-Agent
- Ticket Agent
- Telephone and Information Clerks

Express-Baggage category shall include:

- Express Agent
- Porters
- Janitors
- Maids

All employees hired after June 23, 1963, after their 30 day training period must work at least one week in the lowest classification in the category for which they have been trained before moving to a higher classification. In case of a decrease in working force

an employee shall be given one (1) week's notice (five working days) before being laid off. Terminal and system seniority shall apply for bumping in event of reduction in forces, from any classification to a like classification or to a lower classification where seniority has been established by the employee, but will not apply in bumping to a higher classification unless employee has had previous seniority in higher classification and can now qualify for that position. System seniority shall include all Company operated terminals and in case of layoffs system seniority will prevail as outlined above. Exercise of seniority must be within forty-eight (48) hours from time notice is posted.

SECTION 2 (a). In cases where an employee transfers or is transferred from one classification to another, his seniority in the new classification shall commence on the date of the transfer, and he shall retain his full seniority based on his original employment date, in the classification from which he was transferred.

SECTION 2 (b). If transfer from one classification to a higher classification is made and it is found qualifications were inadequate, the employee will be returned to the original classification. Reapplication may be made after one year.

SECTION 3. The rights of seniority, in cases of reemployment shall be according to laid-off employees prior to new employees being hired, providing such laid-off employees respond to a call to report to work not more than five (5) working days after notice has been sent to him by registered mail, return receipt requested, to his last known post office address.

SECTION 4. The employer shall prepare and make available to the union, a list of the names of all employees according to seniority in each classification every six (6) months, if requested.

SECTION 5. Seniority shall be lost for the following reasons only: (1) voluntary quitting, (2) discharge for cause, (3) absence from work for five (5) con-

APPENDIX "A"

WAGES

SECTION 1. The following hourly wage scale shall be effective for the period June 24, 1963, thru June 23, 1964.

Head Starter—Agent

1st year	*2nd year*	*3rd year*	*Thereafter*
$3.07	$3.12	$3.17	$3.25

Starter—Agent

1st year	*2nd year*	*3rd year*	*Thereafter*
$2.81	$2.88	$2.95	$3.02

Ticket Agent

1st year	*2nd year*	*3rd Year*	*Thereafter*
$2.62	$2.69	$2.76	$2.87

Telephone and Information Clerks

1st year	*2nd year*	*Thereafter*
$2.37	$2.44	$2.55

Ticket and Information Agent Trainee

1st 30 Days
$1.95

Express Agent

1st year	*2nd year*	*Thereafter*
$2.44	$2.51	$2.61

Head Porter

1st year	*2nd year*	*Thereafter*
$2.26	$2.31	$2.36

Porter

1st year	*2nd year*	*Thereafter*
$2.05	$2.10	$2.21

Janitors and Maids

1st year	*2nd year*	*Thereafter*
$1.79	$1.86	$1.97

Express and Baggage Trainees:
Applicable to Express Agents and Porters

1st 30 Days
$1.65

EXHIBIT 'B' : A Portion of the

AGREEMENT between

SAFEWAY TRAILS GARAGE

and

AMALGAMATED ASSOCIATION OF
STREET, ELECTRIC RAILWAY AND
MOTOR COACH EMPLOYEES OF AMERICA
DIVISION 1112

(Effective June 24, 1963)

Article IV: Seniority

Appendix A: Wages

ARTICLE IV

SENIORITY

SECTION 1. The length of service of an employee in his classification shall determine the seniority status of the employee. The principle of seniority shall govern and control all cases of promotion, transfer or decrease or increase of the working force, within each classification. In case of a decrease in working force, an employee shall be given one (1) week's notice before being laid off.

SECTION 2. In cases where an employee transfers or is transferred from one classification to another, his seniority in the new classification shall commence on the date of the transfer, and he shall retain his full seniority based on his original employment date, in the classification, from which he was transferred. An employee qualifying for a position in a higher classification must retain the classification permanently, unless he has been disqualified.

SECTION 3. The rights of seniority, in cases of re-employment shall be accorded to laid-off employees prior to new employees being hired, providing such laid-off employees respond to a call to report to work not more than five (5) working days after notice has been sent to him by registered mail, return receipt requested, to his last known post office address.

SECTION 4. The Employer shall prepare and make available to the Union, a list of the names of all employees according to seniority in each classification, every six (6) months, if requested. When new employees are hired or reclassified or severed a copy of the payroll change form will be supplied Division 1112.

SECTION 5. Seniority shall be lost for the following reasons only: (1) voluntary quitting, (2) discharge for cause, (3) absence from work for five (5) consecutive working days without notice to the Employer, (4) failure to return to work as required in Section 3 above.

APPENDIX "A"

WAGES

SECTION 1. The following hourly wage scale shall be effective for the period June 24, 1963 thru June 23, 1964:

CLASSIFICATION	RATE
Electrician	$3.12
Motor Rebuilder	$3.12
Senior Mechanic	$3.04
Mechanics	$2.86
Special Mechanics	$2.96
Utility Mechanic	$2.66
Mechanics Helper	$2.59
Senior Cleaner	$2.56
Cleaners	$2.46
Parts Clerk	$2.68

A new employee's starting rate shall be ten (10) cents per hour below the rates above for a period of one year.

SECTION 2. For the period June 24, 1964, thru June 23, 1965, there is provided herewith an increase in the rates shown in Section 1 above, an additional 10¢ per hour.

SECTION 3. For the period June 24, 1965, thru June 23, 1966, there is herewith provided an increase in the rates shown in Section 1 above, an additional 21¢ per hour.

SECTION 4. In addition to the basic rates of pay specified in this Agreement, all employees covered by the Agreement shall be paid a cost-of-living allowance.

The cost-of-living allowance is based on 1¢ per hour adjustment, above the basic rates established in Section 1 of this Article, for .5 point change in the index above the basic index. The following example table is continued on such basis in the event the published index extends beyond the table.

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HORACE STERN
MORRIS WOLF
OF COUNSEL

GORDON A. BLOCK
1918-1964

COPY

March 26, 1965

Mr. James Williams
CORE
2229 North Broad Street
Philadelphia, Pennsylvania 19132

Re: Safeway Trails, Inc.

Dear Jim:

I enclose the employment lists received from Trailways. Gil Cantor and I will go over this material and then will be in touch with you. In the meantime, if you have any comments we will be happy to have them.

Sincerely,

Burton Caine
For WOLF, BLOCK, SCHORR and SOLIS-COHEN

BC:am
Enclosure

cc: Gilbert M. Cantor, Esquire
Carl Rachlin, Esquire ✓

4/15

March 31, 1965

Burton Caine, Esq.
Packard Building - 12th floor
Philadelphia, Pennsylvania 19102

Dear Burt:

Upon receipt of your letter and enclosure of the 26th inst. I asked Eric Mann to check over the list. I expect to hear shortly from him and will pass the report on to you.

Many thanks for all you and Gil have done. I fell down on helping to organize a Philadelphia civil rights legal committee, but I am distressed at the burden on you fellows and Bill Akers and we should spread this further.

Do you think we might try again? I could help put together a list of lawyers in Philadelphia who could be helpful. What we would need is someone who could handle the distribution of the work. Perhaps Bill Akers might be willing.

|| Would a Saturday lunch meeting or an evening dinner meeting be more advisable?

Let me hear from you.

Cordially,

Carl Rachlin
General Counsel

cc: Gilbert Cantor, Esq.
Joyce Ware
Eric Mann

CR:hdl

file ~~Phila office~~ Trailw Phil

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MORRIS WOLF
OF COUNSEL

GORDON A. BLOCK
1918-1964

April 26, 1965

Hon. Eugene V. Alessandroni
Room 642 City Hall
Philadelphia, Pennsylvania

COPY

Re: Safeway Trails, Inc. v. CORE
C.P.No.2, Dec. Term, 1964 No. 1576

Dear Judge Alessandroni:

I have received a copy of Mr. Naulty's letter to you of April 23 enclosing the motion and order to dissolve the preliminary injunction.

Insofar as the language of the motion presupposes that there may have been violence in the original picketing we respectfully disagree. We have always contended, and I believe plaintiff has conceded, that there was no violence at any time.

The allegation in the motion that there has been no picketing subsequent to the incident referred to in the complaint is not quite accurate. There has been no picketing recently, but Your Honor will recall that pursuant to an agreement reached in your chambers, picketing by not more than 12 persons continued for some time.

I communicated the above to your clerk on the telephone this morning in response to his phone call and I learned that Your Honor had signed the order dissolving the injunction.

We are pleased that the injunction has been dissolved, and we are indeed grateful to you for working out the arrangement whereby plaintiff will supply us with information on its hiring and promotion policies with respect to Negroes.

As you know, some information was supplied, and we are looking forward to receiving the balance of the data which we discussed in your chambers on March 30.

We join with Mr. Naulty in thanking you for the time and consideration you have given this matter.

Sincerely,

Burton Caine

BC/fo
cc: John F. Naulty, Esquire
bcc: Gilbert M. Cantor, Esquire
Carl Rachlin, Esquire

COPY

Phila
Trailways

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OF COUNSEL

GORDON A. BLOCK
1918-1964

May 6, 1965

COPY

John F. Naulty, Esquire
11th Floor, Land Title Bldg.
Philadelphia, Pa. 19110

Re: Safeway Trails, Inc. v.
CORE

Dear Mr. Naulty:

I have your letter of April 30, 1965 together with a copy of a praecipe for discontinuance. You advised that the original has been filed of record.

Pursuant to the agreement which we concluded in Judge Alessandroni's chambers on March 30, we will now expect to receive from you the balance of the information with respect to the hiring and promotion policies of Safeway Trails, Inc. In this connection, please refer my letter to you of April 13, 1965 and my letter to Judge Alessandroni dated April 26, 1965 a carbon copy of which went to you.

You will recall that you agreed to supplement the list previously supplied to us with the employees of the company which operates Trailways in New England. You will also recall that we pointed out that the first list which you gave us purports to cover coach operators employed by Safeway Trails, Inc. between January 1, 1964 and "date" (date not being specified). You agreed to bring the list up to the present; to specify how many of the Negroes listed are still employed by the company; and also what proportion of all the drivers employed are Negroes.

COPY

Important also is the fact that no addresses have been supplied, and, therefore, we are unable to investigate and verify the information. You agreed before Judge Alessandroni to supply these addresses.

More than a month has passed since our March 30 meeting and we ask that you supply us with the information as soon as possible.

Sincerely,

Burton Caine

BC/fo
cc: Gilbert M. Cantor, Esquire
bcc: Mr. James Williams
Carl Rachlin, Esquire

JUN 8 1965

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BARRY WAXMAN
RICHARD A. JACOBY

June 7, 1965

COPY

John F. Naulty, Esquire
11th Floor Land Title Building
Philadelphia, Pennsylvania 19110

Re: Safeway Trails, Inc. v. CORE

Dear Mr. Naulty:

I would appreciate the courtesy of a reply to my letter of May 6, 1965.

As yet we have not received the information from your client which you agreed to supply in our meeting with Judge Alessandroni. In this connection, please see my letter of April 13, 1965 to you and my letter to Judge Alessandroni with a copy to you of April 26, 1965.

Sincerely,

Burton Caine

BC:je
cc: Gilbert M. Cantor, Esquire

bcc: Mr. James Williams
Carl Rachlin, Esquire

This was mailed to the Chapter chairman of the North East Region
BSE

CORE
Northeast Regional Office
48 West 125th Street
New York, N.Y. 10027
EN9-0101

ATTN: All Northeast
Regional Office

Trailways Negotiations

Enclosed is a summary of initial negotiations with the Trailways Bus Company. On Thursday, October 22, negotiations toward some form of a target program for total integration of opportunity with in the trailway workforce including supervisory and managerial positions will ensue.

If negotiations prove unsucessful, we intend to iniate a direct action project against Trailways on the regional level. Therefore if negotiation do collapse;

1. Is there a Trailways in your area? ____________________

2. Would you participate in a direct action project against Trailways? ____________________

3. Would you be willing to give this project high priority? __________

4. If so, would you be able to send delegates to a meeting in New York to plan and coordinate this project? ____________________

5. Since Negotiations will be in progress by the time you recive this letter, I urge that you reply immediately.

Sincerely your,

Eric Mann
Field Secretary

P.S. To chapters previously notified please send in Sheraton Hotel Reports Immediately.

TRAILWAYS BUS NEGOTIATIONS

Part I Individual Grievances

On October 8, 1964 I met with three officials of the Trailways Bus Company, officially called Safeway Trails Inc., to discuss an alleged violation of an agreement which they had signed with CORE the previous year. Rowland Watts of the Workers Defense League, who had been present at the previous year's negotiations, was unable to attend because of illness, but was replaced by a Mr. Thor. Safeway Trails was represented by Mr. McShane, the Regional Manager Mr. Walsh, the Assistant Terminal Manager, and Mr. Garrett the assistant to the meeting was chaired by Mr. Louis Zimmerman of the City Commission on Human Rights. Mr. Zimmerman was very favorable to our cause, was agreeable, and was quite helplful during the discussion.

The individual grievances were initiated by three courageous porters, Noel Quinones, Ed Barnes and Charles Griffing. According to last years agreement, a copy of which is enclosed, there were to have been extensive opportunities for Negro and Puerto Rican employees to move up to higher skilled and better paying positions withing the company. Although five (5) porters had made applications for the position of telephone information clerk the company did not even acknowledge their applications, and Mr. Garrett claimed that theyhad only received on (1) application from Ed Barnes. Mr. Zimmerman, however, contradicted Mr. Garrett by showing his copies of all fivd letters of application which he had asked the porters to send to him. Mr. Garrett claimed that there had been very few openings in these positions during the year, but I showed him copie of the seniroity lists which Ed Barnes had secured for me from the union, which showed that (6) new people had been hired since the agreement was reached, none of whom were previous employees of Trailways. Eventually the negotiations developed in such a way that the Trailways people had to admit that they had violated the agreement and as a result were in a weaker position during the remainder of the negotiations. The final results of the negotiations were as follows:

1. At the urging of Mr. Zimmerman and myself, Mr. Garrett signed an agreement that in all subsequent openings in the information clerk category the five porters, who were specifically mentioned by name in the agreement would be given first priority in hiring.
2. Mr. Garrett was told that if one opening developed in this category and the porter with the highest degree of seniority was given a job on a trial basis, as is the usual practice, and proved to be unsatisfactory, CORE will expect:
    1. A detailed report on the reasons why the employee was found unsatisfactory.
    2. That the next person to be considered for the position would be the porter with the second highest amount of seniority.
    3. CORE will expect all five porters to receive trials for the position of information clerk before any applications can be honored from individuals who are not presently employed by Safeway Trails.

4. Job security - a new factor entered the negotiations because of the violation of the previous agreement. In the period since the first agreement most of the porters have been laid off. From an original figure of 18, the number of porters has been reduced to six (6). The porters who are still employed are tremendously worried that before any openings develop in the information clerk category they will be laid off as porters. CORE made it clear to the Trailways officials that if any of these porters were to belaid off CORE would institute a direct action regional project against Safeway Trails. The rationale behind this is that if the five porters had been given fair treatment last year, as was provided in the agreement, they would be presently employed in the information clerk category which is a growing department, and thus would not be affected by any decisions to eliminate the entire category of porter. Although the Trailways people told us they had no plans to lay off any more porters, they did agree to include a provision that if any porters were laid off before openings developed in the information clerks category, they would be transferred to the baggage clerk category (a higher paying but less desirable position than porter) until such openings did develop. The Trailways people let us know that they would not create jobs in the baggage room in case the porters were laid off, but would only employ them in the baggage room if such openings did exist. CORE told them that it was not interested in whether or not opportunities did exist, because Trailways had better find some opportunites unless it wanted to get involved in an all out struggle with every CORE chapter in the Northeast. Actually, Trailways was just trying to save face by saying that they would not create jobs, because I am sure when and if the situation develops the will give the porters jobs in the baggage room rather than risk an encounter with CORE over five extra jobs.

5. Overall hiring policy - I deliberately avoided including discussion of Safeway Trails overall hiring policy at the meeting for two reasons:
    1. There was not enough time to fully discuss the individual grievances and also go into the overall policies in detail.
    2. I did not want to involve the individuals in a more heated discussion which I know will develop when we get into a discussion of increasing the number of Negro employees because I felt this was not their reason for coming to CORE for help and that their physical presence during the second part of the negotiations might unnecessarily subject them to further pressure from their employers once they returned to work.
    3. The second half of the negotiations will take place on Thursday October 22, also in Mr. Zimmerman's office. I will report on the results of those negotiations at their conclusion.

CORE Northeastern Regional Office
48 West 125th Street
New York, N. Y. EN 9-0100

TO: ALL CORE CHAPTERS - NORTHEASTERN REGION

FROM: ERIC MANN, FIELD SECRETARY

RE: TRAILWAYS BUS COMPANY

Purpose: The purpose of this report is to give a full history of the Trailways situation, to outline what action has been taken to date, and to propose a regional project of boycott and harassment of Trailways operations in the North East. I would like to emphasize that in the past many chapters have complained of the lack of communication between the National or Regional offices and the individual chapters. While this was undoubtedly true, on the other hand three weeks age I sent a similar communication to all chapters with an attached questionnaire, and received only five replies out of almost sixty chapters. This report will be rather lengthy, because the problems have persisted for over a year, and I hope that it will be read and replied to.

History: CORE's involvement in this situation began a year ago, November 1963, when five Negro and Puerto Rican porters requested that CORE help them in gaining promotional opportunities at Safeway Trails Inc. (Trailways is a broad name which incorporates many separate corporate structures, e.g. Trailways of New England, Continental Trailways, Adirondack Trailways). Our specific grievance at this point is with Safeway Trails, which operates the terminals in New York, Baltimore, Philadelphia, and Washington. The porters, all of whom had over five years of seniority with the company, had been applying for better jobs and had been continually rebuffed. One man, Ed Barnes, had taken a test for a better job, (ticket agent) and was told that he had failed. Unconvinced, he brought his case to the State Commission on Human Rights and when his record was subpoenaed it was found he had received one of the highest grades in the history of the company. After extensive negotiations with officials of Safeway Trails Inc., a two part agreement was reached with the company. The agreement provided: 1. That the Negro and Puerto Rican employees who were already employed by the company in menial positions would be afforded first opportunities at all new jobs which would develop in higher job categories, i.e. information clerks and ticket agents. And 2. Since CORE was concerned with the entire job picture at Safeway Trails, the Vice-President Marvin E. Walsh agreed to target figures for Negro and Puerto Ricans in all job categories, i.e. 9 drivers, 5 ticket agents, 5 information clerks, 5 mechanics, and the hiring of additional porters. (This last category, the hiring of additional porters, was quite important because almost all the porters were Negro. Thus, since CORE does not work in the area of job recruitment, this would provide us with a constant supply of Negro workers who would be available to move up to better jobs, and who would be in constant contact with Ed Barnes, Sam Reed, and Noel Quinones, the leaders of the porters. Hopefully, this situation would become self-operating and no longer dependent on CORE's involvement. Negroes would come in as porters, work their way up to better jobs, and be replaced by other Negroes at the porter level. They in turn would encourage the porters to apply for any new openings and the cycle would maintain itself. Unfortunately, no such development took place.

Late in September Joyce Ware, another Regional Field Secretary and myself were contacted by the three men mentioned above, along with a fourth man, Charles Griffin, also a Negro porter. They told us that despite the fact that they had applied for promotions as soon as the agreement was reached with CORE , i.e., ten months previously they had received no acknowledgement of their applications and none of them had received promotions, although ten people from the outside had been hired as ticket agents and information clerks.

We immediately reopened negotiations with Safeway Trails Inc. at a meeting on October 8 at the office of the City Commission on Human Rights. I presented the facts to the Safeway officials and they claimed they had never received any applications. Fortunately, the conciliator for the C.C. H. R. produced duplicate copies of the applications which the men had submitted to him. After a long session Safeway agreed to give these men first preference at any new jobs which developed. This was not a concession on their part, it was a concession on ours, because all they were doing was agreeing to last year's agreement without suffering any consequences for violating it.

The second part of the agreement involving their overall job picture took place two weeks later The details of the negotiations are quite complicated but in essence the results were as follows;

Promised	Results
9 Drivers	7 were hired, one was fired
5 Ticket agents	1 was hired
5 information clerks	3 were hired
5 mechanics	1 was hired
"additional porters"	12 were fired, most because of lack of work available, a few for insubordination.

Thus, although the second part of the negotiations did indicate some progress, there were also great problems which had developed. 1 The cycle of Negro job progress described above was cut off at the bottom and the top. At the bottom by laying off most of the porters, and at the top by not promoting those porters who remained (It is important to note that the so-called lay offs among the porters did not develop because of lack of available work, because now the company is using men from the baggage room in violation of the union contract, to do the porters work)
2. The Negroes and Puerto Ricans in the Safeway operation had constantly undergone veiled racial antagonism in their daily work. Most of the Safeways officials are from the South, and tremendously resent any Negro who is unwilling to "know his place." Thus, while partially complying with the agreement by token hiring, they have tried to undermine any real minority leadership in the terminal. Thus, charges of insubordination are frequently used as grounds for firing competent Negro and Puerto Rican employees.
3. The company was very unwilling to work with CORE towards more meaningful job target figures for the coming year, as well as working to reduce racial tension in their operation.

I left the meeting quite dissatisfied but not sure as to what steps should be taken. I definitely felt that direct action was the only step at this point which could convince Safeway Trails to take these negotiations seriously but because of the poor response I had received from the chapters in the region I was hoping to avoid this tactic if at all possible. But two developments (subsequent) prevented any chance of avoiding demonstrations. First, one of the five porters who had waited over five years, and another year after the CORE agreement to be promoted, was fired for insubordination. I immediately sent Mr. Marvin Walsh, Safeway V.P., a special delivery letter announcing we would commence direct action unless he immediately contacted me to clear up the many problems which existed in the Trailways situation. He did not acknowledge my communication at which point representatives of the New York City chapters, as well as representatives from Boston, New Haven, Kingston, and Westchester, took part in a demonstration at the Port Authority Terminal in Manhattan. (Safeway Trails is co-occupant with Greyhound). About forty-five people picketed inside the terminal for about an hour. Leaflets were distributed, the line was extremely orderly, and entrances to the ticket windows were not blocked by the pickets. However, twenty of our picketers were arrested, at the request of the Port Authority officials, for interfering with traffic and disturbing the tranquility of the terminal. (The official charge was disorderly conduct.) This took us quite by surprise and with half our people receiving summonses at the 14th Precinct we were unable to continue our demonstration outside.

The following Saturday, November 14, we once again demonstrated at the Port Authority, only this time the demonstration was outside. Our group was fairly large -- about 85 -- and the line was orderly and spirited Simultaneous with the picketing and handing out leaflets, Herb Callender, Regional Field Secretary, was leading a harassment project inside the terminal in which CORE members were purchasing tickets with pennies and planning extensive trips in an attempt to tie up the information clerks and ticket agents. Everything went off according to plan, and from an organizational aspect the demonstration was quite successful.

Evaluation: Despite the technical success of the second demonstration I doubt its affect on the Trailways people.for the following reasons: 1. The demonstrations were spaced a week apart, due to manpower considerations, and this did not give the' impression of determination or committment. 2. The demonstrations were dependent on news media coverage for their success. Since the white news media are not interested in getting involved in the details of a complex situation, the news presentation did not present us in the best light e.g. Television pictures of the only Negro ticket agent, and one of the Negro drivers gave the impression that we were falsely charging discrimination. An interview with Ed Barnes, one of the porters, was edited and never presented on the air. Safeway officials said that over 35% of their staff was Negro, and the news media never questioned these figures as regards their validity and very few printed our conflicting figures. 3. Because of the ambiguous way the news was presented our demonstrations were of negligable economic concern to Safeway Trails. We were unable to communicate our point of view in a forceful enough way to encourage people to boycott Safeway Trails.

Recommendations:

1. There are four terminals which Safeway Trails operates: New York, Baltimore, Philadelphia, and Washington In these four cities we would urge a well-publicized Thanksgiving Boycott run in conjunction with picketing and harassment on Tuesday and Wednesday and Thanksgiving Day.

a. Suggested forms of harassment could include: tying up the ticket windows by use of pennies, stalling before buying a ticket, looking for a check book, requesting to write a check which they invariably will not accept making a scene over not having the checks accepted., ect.

b. Extensive use of the Negro news media, i.e. newspapers and radio stations. We found in our New York demonstrations that despite extensive coverage from the major networks and newspapers: 1. The stories were always slanted against us, and 2. They were not reaching the people who would most likely support CORE's action.

2. Supportive Action by other chapters who have Trailways operations in their own cities. It is important to emphasize that EVERY TRAILWAYS OPERATION OUTSIDE OF NEW YORK, PHILADELPHIA, WASHINGTON, AND BALTIMORE IS NOT PART OF THE SAFEWAY TRAILS CORPORATION, AND THEREFORE IS NOT RESPONSIBLE FOR THE SITUATION DESCRIBED ABOVE. This is not to say that they are not guilty of their own form of descrimination, it is only to emphasize that chapters wishing to become involved in employment negotiations with Trailways operations in their area, first undertake preliminary investigations into the racial composition of the work force and then find out which particular corporate structure your city is a part of, e. g. Trailways of New England, Adirondack Trailways. Once this has been established, cooperative action among the chapters involved with a particular corporate structure

should be arranged. Hopefully this work will be finished in time so that a Christmas Boycott will be able to materialize in case of Trailways unwillingness to reach an agreement with CORE. Also, hopefully Safeway Trails will have capitulated by that time. If this is the case, the chances of successful negotiation with other Trailways operations will be greatly enhanced.

I realize that this report is quite lengthy, but I hope it proves helpful and informative. Although no questionnaire is attached, please take it upon yourself to briefly appraise me of the situation in your city, what plans you anticipate in this area, and if there is no Trailways in your area, why not consider working in conjunction with a nearby chapter which does encounter such a situation.

Best of Luck! !

CORE NORTHEASTERN REGIONAL OFFICE
48 West 125 Street, New York, N.Y.
En-9-0100

BOYCOTT TRAILWAYS

TRAILWAYS DOES NOT GIVE EQUAL OPPORTUNITIES TO NEGRO AND PUERTO RICAN JOB APPLICANTS

Despite the fact that 20% of the New York City population is Negro and over 60% of Trailways' customers are Negro:

Trailways employs 325 drivers------- Only 8 of them are Negro.
Trailways employs 25 ticket agents--Only 1 of them is Negro.
Trailways employs 25 information clerks--- Only 3 of them are Negro.
Trailways employs 18 hostesses on its luxury buses. --- NONE of them are Negro.

TRAILWAYS DOES NOT GIVE PROMOTION OPPORTUNITIES TO QUALIFIED Negroes and Puerto Ricans WHO WISH TO ADVANCE TO BETTER PAYING JOBS.

Five Negro Porters have waited for more than a year to fill jobs which they were promised by Trailways. The company promises them better jobs, but then hire white workers from the outside to fill the better positions. NEGRO AND PUERTO RICAN WORKERS WHO TRY TO FIGHT THIS POLICY ARE INTIMIDATED OR INSULTED UNTIL THEY EITHER QUIT OR ANSWER BACK THEIR SUPERIORS, AT WHICH TIME THEY ARE FIRED FOR INSUBORDINATION.

DO NOT USE YOUR MONEY TO SUPPORT DISCRIMINATION
RIDE FREEDOM NOT TRAILWAYS

YOU CAN HELP!

(1) Do not ride Trailways.
(2) Write a letter to

Marvin E. Walsh
Vice-President, Safeway Trails Inc.
1200 I St. N.W.
Washington, D.C.

(3) Tell your friends to join and support the boycott.

DO NOT RIDE WHERE YOU AND YOUR CHILDREN CANNOT WORK

FACT SHEET ON CORE"S TRAILWAYS BOYCOTT

CORE became involved in this situation at the request of many of the Negro porters who worked for the Safeway Trails affiliate of the Trailways Bus Company. Safeway Trails Inc. operates the Trailways terminals in New York, Philadelphia, Washington, and Baltimore. The Negro employees complained that they had been working as porters for anywhere from five to ten years, and had been continually harassed and thwarted when they attempted to advance themselves by applying for better jobs at Trailways. A detailed study of the Safeway Trails operation showed a distinct pattern: the menial lower paying jobs were staffed almost exclusively by Negroes and Puerto Ricans, while the higher paying and prestige jobs, e.g. drivers, hostesses, ticket agents, information clerks, management, sales, and clerical, were almost exclusively white.

As a result of this situation, in November of 1963 CORE, through the offices of the New York City Commission on Human Rights, entered into negotiations with the company in an attempt to remedy this problem. Despite the company's initial claim that no such discrimination existed and that equal opportunities for advancement existed, after the presentation of evidence to the contrary by CORE the company agreed to take steps to improve the situation. The agreement reached between Safeway Trails Inc. and CORE stipulated that the company would hire minority employees over the year as follows: 9 drivers, 5 ticket agents, 5 information clerks, 5 mechanics, and additional porters. Also, first priority for these new job openings would be given to the Negro and Puerto Rican employees who had been trying to advance themselves, but who had been frustrated in their attempts by the company.

Ten months later, after a new series of complaints from the Negro porters in the New York terminal, CORE once again called for a meeting with the company's officials to review the results of the previous year's agreement. On October 8, 1964 such a meeting was held, and the results were quite unsatisfactory. None of the five porters had been promoted as promised, many of the other porters had been fired for insubordination after provocation from their supervisors, and none of the figures set by the company had been lived up to. This situation was inexcusable as both CORE officials and the conciliator from the Commission on Human Rights were able to produce evidence that showed:
1. many white employees had been hired over the year, despite the company's claim that a curtailment of business had caused a virtual standstill in hiring, and 2. despite the company's statement that they had received no applications from the porters, in fact, five applications had been submitted and no response, affirmative of negative, had been received by the porters. When they questioned the personnel manager he told them the positions had been filled.

It was obvious that the agreement had been violated and from our point of view we felt that this justified taking direct action against the company. At the urging of the City Commission, however, we agreed to meet again with Safeway Trails to negotiate a new agreement. We made it clear to the Commission and the Trailways officials that we were extremely dissatisfied with the company's attitude and response to the racial inequities which existed in its operation, and that we would be far more vigilant in checking the results of the next agreement. We asked, however, that Marvin E. Walsh, executive vice-president of Safeway Trails, attend the meetings, as his previous practice of sending men who were unauthorized the make decisions for the company had proven unworkable.

In the next few weeks, early in November, the situation reached a point which left no viable alternative to direct action against the company. Intensive harassment of the minority employees who had brought in CORE to represent them was initiated by the company. One employee, Sam Reed, was fired for insubordination, after he refused to wait outside in the cold for a bus which was not scheduled to arrive for a half hour. Similar incidents, such as preventing porters from using bathroom facilities except on their lunch period and the institution of "no tipping" signs, were initiated in an attempt to provoke other dismissals. Shortly after Sam Reed's departure, Noel Quinones the leader of the Puerto Rican workers in the terminal, quit under great pressure from his superiors.

Upon learning of this situations, both Mr. Zimmerman of the C.C.H.R. and Eric Mann, a CORE field secretary, sent telegrams to Mr. Marvin E. Walsh, urgently requesting his attendance at a meeting in New York to remedy this situation. Mr. Walsh did not reply to the telegram sent by CORE, did not attend the meeting in New York, and has made no attempts to contact any representative of National CORE, or any of its chapters, since then.

THE FOLLOWING DOCUMENTS ARE THE
BEST AVAILABLE.

D CORE PROTEST HELD AT BUS LINE

Pickets March at Terminal and Try to Stall Service

By ALFRED E. CLARK

About 75 members of the Congress of Racial Equality demonstrated for the second straight Saturday yesterday outside the Port Authority Bus Terminal to protest alleged discrimination in hiring practices of the Trailways Bus Company.

The pickets, who staged a demonstration inside the terminal last week that resulted in 18 arrests on charges of disorderly conduct used a different technique in their four-hour protest yesterday afternoon.

Several score of them went to the bus company's ticket and information booth individually and tried to delay service by seeking to purchase tickets with bags of pennies. They also tried to stall line by engaging clerks in prolonged discussions about bus schedules and fares.

No arrests were made. Outside, almost 100 city policemen, detectives and plainclothesmen were on duty around the Port Authority terminal, which [illegible] and [illegible] to Ninth Avenue.

The pickets carried placards denouncing the bus company for alleged discrimination against Negroes and Puerto Ricans. [illegible]

[illegible]

[illegible] youth and [illegible] that amount.

Customers Shunted

While this was occurring, [illegible] walked up to different counters and engaged clerks in discussions about time schedules and fares. Meanwhile, supervisory workers kept directing customers to other counters where they could receive quicker service.

R. J. McShane, New York regional manager for Trailways, denied the charges that the company practiced discrimination against Negro and Puerto Rican employes. He described the incidents at the counters as "irresponsible acts."

"The action today," he added, "will be of grave concern to the truly dedicated Negro individuals and organizations who seriously seek to further the cause of human rights."

The pamphlet distributed by the pickets charged that only 4 of Trailways' 500 drivers are Negroes, one of 25 ticket agents [illegible] clerks are Negroes.

The company disputes this, saying that 35 to 40 per cent of the 3,500 people it employs between Washington and New York and New York and Boston are Negroes. [illegible]

PHILA BULLETIN
1-10-65

PHILA INQUIRER 1-10-65

Page 2 Sec-2 acg

Bus Depot, NAACP Picketed by CORE Despite Court Ban

The Congress of Racial Equality demonstrated against a bus company and the National Association for the Advancement of Colored People on Saturday.

Twelve pickets marched back and forth in front of the terminal of Safeway Trails, Inc., at 13th and Arch sts., despite a restraining order issued late Friday by President Judge Eugene V. Alessandroni, of Common Pleas Court 5.

JUDGE STANDS FIRM

The picketing was peaceful. William Lee Akers, CORE's counsel, said the court order did not bar peaceful picketing. John F. Naulty, attorney for Safeway, agreed and said the petition for the injunction was filed only to prevent possible violence.

Judge Alessandroni differed, however. Before the demonstration got under way at 1 P. M., the jurist said:

"There is no question that they are enjoined from picketing. There is no doubt about that."

CITES HIRING OF 16

Cecil B. Moore, president of the Philadelphia chapter of NAACP and an attorney, had joined the transit firm in seeking the injunction because, he said, Safeway had agreed to hire 16 Negro bus drivers.

Moore withdrew as co-plaintiff in the case in order to appear as a witness in behalf of Safeway.

Moore's action, Akers said, created "an extremely dangerous situation." He added:

"It appears we are being bluffed by this nickel-and-dime Napoleon, Cecil. The only thing to do when bluffed is call it."

The pickets, eight men and four women, carried placards proclaiming: "Don't ride Trailways," "Will you ride Jim Crow?" and "Fair Play or No Fare Play."

They marched in a circle under the eyes of an eight-man police "civil disobedience team" under Inspector Millard Meers and Lieutenant George Fencl. The police did not interfere with the demonstration.

Akers accused the transit firm of violating an agreement reached with CORE in December, 1963, and a later agreement between the company and the NAACP.

'CLEARLY IN DEFAULT'

"The bus company clearly is in default," the lawyer said. "They haven't kept their promises to anybody. Mr. Moore has not made a sufficient investigation into the failure to keep their promises with him. Why this is so, I do not know.

"At the present time, information indicates there still is a distinction in the company between Negro and non-Negro employees. This is the basic bone of contention."

Akers maintained that the copy of the petition given to him banned only "assembling unruly persons" at the bus terminal, hindering or molesting passengers or interfering with the movement of buses.

CORE Continues Bus-Stop Pickets

Fifteen pickets from the local branch of the Congress of Racial Equality picketed yesterday afternoon in front of the Safeway Trails bus terminal, 13th and Arch sts.

The line is part of the nationwide Trailways system.

On Friday, Judge Eugene V. Alessandroni issued a preliminary injunction restraining the organization from conducting further demonstrations at the terminal.

Yesterday, James Williams, branch chairman, said the organization was "in no way defying" the court.

"We are within the letter of the law," he said.

CORE attorney William Lee Akers told [illegible] Judge Alessandroni's order had not barred picketing in any way, shape or form.

The pickets distributed leaflets and carried placards in a drive to get [illegible] Negro employees.

RACHLIN

Phila Independent January 16, 1965

Wilkins Joins Moore In Anti-CORE Fight

CECIL MOORE

Cecil B. Moore in a blistering attack on CORE charged Tuesday that the "so-called civil rights group" is "90 percent white and just like carrion or buzzards feasting off the dead carcasses of segregation and discrimination that the NAACP with years of sacrifice and its facilities has slain."

Moore was responding to an "open letter to members of the NAACP" from James O. Williams, chairman of the Philadelphia chapter of the Congress of Racial Equality.

Williams charged in his letter that CORE will tolerate no further attacks by Moore but alleged that "Moore undoubtedly has made some sort of sweetheart pact with not only the bus company, but the power structure." Williams' letter is printed on page 7.

The Rev. Henry H. Nichols, Moore's opponent for presidency of the local branch NAACP, also got into the act and charged that "Moore's dictatorial and one-man-show tactics keep all the various civil rights organizations from working together harmoniously."

"CORE," continued Moore, "would sacrifice and endanger the Civil Rights Movement just to get their pictures in the paper—at the expense of Negro jobs."

"Whom do they represent?" said Moore. "They are nothing but glorified white civil rights delinquents whose only purpose is access to Negro women."

WILKINS BACKS MOORE

Roy Wilkins, executive director of the NAACP, stepped into the picture earlier this week and stated, "We back Cecil B. Moore in his agreement with Trailways." He continued, "We fully support our Philadelphia president [illegible]."

The dispute between CORE and the NAACP involves the right to negotiate with the Trailway Bus System and the picketing of the Trailway Bus Terminal at 13th and Arch sts.

According to Moore, he, on behalf of all civil rights groups throughout the system reached an agreement with Trailways that all of the bus drivers hired in 1964 would be Negro. The company's policy is to hire and train 16 persons each year. All hired in 1964 were Negro.

REV. HENRY W. NICHOLS

CORE contends that it had reached an agreement earlier with Trailways which was not being lived up to. In fact, contends Williams, Trailways is not living up to the agreement allegedly reached with Moore.

John F. Naulty, attorney for Trailways, states that his agreement with Moore involves all of the Trailways system.

Moore cooperated with Trailways in an action to enjoin CORE from intimidating Trailways with threats of picketing. Notwithstanding the legal action, CORE continued to picket.

Dear Carl:
It is going to get worse
Bill

Burt's Caine is going to challenge the Injunction. Important National CORE give fullest support against the Bus Co.

MSS SEDFRE

State of Nebraska vs McNair, Rudolph E et. al. Aug., 1964 - May, 1965

Box 37
Folder 20

State Historical Society of Wisconsin

Please Retain Original Order

Omaha case

AUG 17 1964

COPY

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N.Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

August 13, 1964

Thomas D. Carey, Esq.
512 Service Life Building
Omaha, Nebraska

Re: State v. Jones and McNair

Dear Mr. Carey:

Mr. Rachlin has asked me to follow up on the requests for legal research assistance contained in your various exchanges of correspondence.

As we have been extremely busy this summer, the thirty day extension that you mentioned would be most helpful if we are to provide any assistance. In the meantime, if you happen to have an extra copy of the record, kindly forward it to us.

Within the next few days we plan to have someone wrestle with the research problems outlined in your letters of April 20 and June 16, 1964. If you desire any assistance beyond the research stage, please notify us immediately.

My initial analysis of the issues in the case is as follows:

(a) What is the extent of the constitutional right to seek legislative redress? If a legislative body unconstitutionally refuses to hear its constituents, is there a right to demand to be heard? I anticipate that a thorough review of cases under the First Amendment right of petition might be worthwhile herein.

COPY

(b) What is the history of this statute? i.e., was it ever interpreted so as to include a legislative assemblage? or is it rather a statute protecting the freedom of private assemblages?

(c) Is the statute unconstitutionally vague? As written, any "hot" political meeting would appear to be illegal.

(d) Has the law been discriminatorily enforced, e.g., in the instant case? Your letter of April 20 enumerates several procedural items which indicate the possibility of such discriminatory treatment. See the United States Supreme Court case, Yick Wo v. Hopkins, 118 U.S. 356 (1886), as well as People v. Utica Daw's Drug Co., 225 N.Y.S. 2d 128, and People v. Charles Pam, (decided 1964). In other words, has this statute been used to prosecute any obstreperous groups or simply civil rights demonstrators? If it has been selectively utilized, what is the rationale for its use and non-use?

We hope to be in touch with you very shortly.

Very truly yours,

Marvin Moses Karpatkin
per EB
Marvin Moses Karpatkin

MMK:eb
cc: Carl Rachlin, Esq.

Karpatkin has original of file – make xerox copy file

[illegible]T 5 1964

COPY

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
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CABLE "KARPOLAW NEWYORK"

October 2, 1964

Thomas D. Carey, Esq.
512 Service Life Building
Omaha, Nebraska

Re: State v. Jones and McNair

Dear Mr. Carey:

As we discussed previously, the most advantageous method of handling this appeal would be to coordinate our efforts in research and writing the brief. In this connection, we are fortunate that Mr. Stephen Isaacs, a third year Columbia law student, who spent last summer with the Law Students Civil Rights Research Council, will be working with us.

Our preliminary research indicates that the appellate questions can be lined up as follows:

1. Whether the trial court committed reversible error by excluding evidence of discriminatory enforcement of the ordinance. This, in turn, involves two questions. First, should evidence of discriminatory enforcement of an otherwise non-discriminatory criminal ordinance have been admitted for the purpose of showing a violation of the equal protection clauses of the United States and Nebraska Constitutions? If there was a denial of this basic constitutional right, perhaps the issue should have been decided in pre-trial hearing, as suggested in People v. Utica Daw's Drug Company, Inc., 225 N.Y.S. 2d 128. It seems that the Yick Wo doctrine should be applicable; [Yick Wo v. Hopkins, 118 U.S. 356 (1886)].

Second, what constitutes "discriminatory enforcement"? "Intentional or purposeful" discrimination must be proven. The cases say that mere non-enforcement is not enough. We would be grateful for further information on the extent of other disturbances and anything else which would help on this point.

COPY

2. Whether the ordinance is unconstitutionally vague. As was mentioned in my letter of August 13, 1964, the ordinance, on its face, would seem to prohibit any "hot" political meeting. This issue is connected, in a certain sense, with the first, since a court will be more likely to find discriminatory enforcement of a vague ordinance than of a precisely drawn one. See Edwards v. South Carolina, 372 U.S. 229.

3. Whether the right to petition the legislature for a redress of grievances, guaranteed by the First Amendment, includes the right to demonstrate where the legislature has refused to hear the grievance. Here, the second discriminatory action of the City Councileenters, namely, the refusal to even consider the ministers' fair housing ordinance. It is, unfortunately, not clear from the record, the extent to which the City Council discriminated against the Reverends Jones and McNair. Any additional information you could bring to light on this point would be appreciated. For example, were the ministers physically stopped from reaching the platform where the Council sat? Did the Council discuss at all the previous fair housing ordinance which was introduced by Father Stewart? Did they vote not to consider it?

We are prepared to research the above three issues and write this part of the brief. Other issues we would like to leave for your research and writing, although we will, of course, be glad to provide any research assistance which you may desire.

Those other issues principally arising under Nebraska law are the following:

1. Whether the comment by the prosecuting attorney was prejudicial, therefore necessitating reversal of the lower court decision.

2. Whether failure of the City Council to follow its own rules, i.e., the failure of the Clerk-Sergeant-at-arms to demand quiet before the police rushed in, necessitates reversal.

We will also do further research on the question of which issues are appealable. We think there is no problem here on the

COPY

question of discriminatory enforcement, and it would appear that the other constitutional questions were raised by your requested instruction No. 4.

We will be in touch further with you shortly and I would appreciate your sending the information requested as well as anything you can find on the legislative history of the ordinance, if there is any.

Yours sincerely,

Marvin

Marvin M. Karpatkin

MMK:eb

cc: Carl Rachlin, Esq.
Mr. Stephen Isaacs

(Dictated but not read)

Omaha file
original with per Karpatkin

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

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CABLE "KARPOLAW NEWYORK"

COPY

October 22, 1964

Thomas D. Carey, Esq.
512 Service Life Bldg.
Omaha, Nebraska

Re: State v. Jones and McNair

Dear Mr. Carey:

I assume that you have arranged for a further adjournment of appellants' time to file their brief in the Nebraska Supreme Court, beyond the previously set date of October 19, 1964.

Iffurther assume that the reason you have not answered my telephone calls is that you have been extremely busy with other matters and not yet prepared to further discuss this case.

I would urge you to let me know at your earliest convenience, exactly what the status of the appeal is, particularly (a) the present date for filing the ~~appeal~~brief, and (b) such comments as you have in response to our letter dated October 2, 1964.

Yours sincerely,

Marvin Karpatkin
Marvin M. Karpatkin

MMK:eb

cc: Carl Rachlin, Esq.
Mr. Stephen Isaacs law student in NYC

From the desk of
MARVIN KARPATKIN

3/9/65

Dear Carl,

If the Wisconsin brief upset you, read the enclosed Nebraska one and be thankful for small favors.

Regards,

March 16, 1965

Thomas D. Carey, Esq.
512 Service Life Bldg.
Omaha, Nebraska

Dear Mr. Carey,

I have your brief in Nebraska v. Jones. If there is anything you would like us to do in the preparation of the argument for the Supreme Court of Nebraska, please let me know and, of course, I will be of any assistance I can to you.

Sincerely,

Carl Rachlin
General Counsel

cc: Marvin Karpatkin, Esq.

CR:hdl

CAREY AND PHILLIPS
ATTORNEYS
411 REDICK TOWER BUILDING
OMAHA, NEBRASKA

THOMAS D. CAREY
WILBUR L. PHILLIPS
ASSOCIATE
DAVID A. HABERMAN

TELEPHONE
341-7728

MAR 22 1965

March 18, 1965

Mr. Carl Rachlin
38 Park Row
New York, New York

Dear Sir:

As you will note from the brief, we did not undertake any preparation on the constitutionality of the proceedings or of the ordinance involved. I believe there was an original understanding made with Tom Carey that you would handle the constitutional arguments. While as yet the reply briefs have not been filed. Normally if you are going to file either a separate brief or participate in the arguments, we would need leave of court in order for you to do so. If you plan to participate, either by way of filing a separate brief or by way of argument on these or any other questions, you should let us know in time for us to prepare an application for leave of court, otherwise, I suspect you will be subject to an objection to your appearance and the objection will probably be sustained.

Other than what has been stated above, we do not know of any manner in which special assistance appears to be necessary.

Thanking you for your cooperation.

Very truly yours,

CAREY and PHILLIPS

WILBUR L. PHILLIPS

mg
cc: Marvin M. Karpatkin
660 Madison Avenue
New York 21, New York

3/29

March 22, 1965

Wilbur L. Phillips, Esq.
Carey & Phillips
411 Redick Tower Building
Omaha, Nebraska

Dear Mr. Phillips,

Thank you for your letter of March 18 received this morning. I am glad that you have clarified the question, which was not clear in our minds.

|| Please tell us quickly what the time schedule is on submitting a brief on the constitutional points.

I hope to hear from you soon.

With best regards to Mr. Carey,

Sincerely,

Carl Rachlin
General Counsel

cc: Marvin Karpatkin, Esq.

CR:hdl

402

CAREY AND PHILLIPS
ATTORNEYS
411 REDICK TOWER BUILDING
OMAHA, NEBRASKA

THOMAS D. CAREY
WILBUR L. PHILLIPS
ASSOCIATE
DAVID A. HABERMAN

TELEPHONE
341-7728

MAY 10 1965

May 5, 1965

Carl Rachlin
General Counsel - Core
38 Park Row
New York 38, New York

Dear Sir:

Please find enclosed copies of both the City's Brief as appellee and our Reply Brief as appellant in the matter of State vs. Jones and McNair. In your letter of March 22, you asked us to advise you on proper procedure for submitting brief on constitutional questions during which time we had intended to send you copies of the appellee's brief and any reply brief that we had to prepare; however, our reply brief was filed on April 28 and argument was set for May 3 (Monday) and there was/not time in between for us to prepare you with the proper authority for filing an amicus curie brief on the constitutional questions. In that the U. S. Supreme Court has already spoken with regard to the rights of demonstrations (peaceful assembly and petitioning for redress of grievances) question is necessarily raised as to the advisably of further time and expense on this matter.

Under separate cover, we will be sending you a petition in a matter which we filed recently, whereby we hope to eliminate for all time the matter of open occupancy laws and ordinances. We think that if you are willing to assist us on the standpoint of briefs and arguments, that this is a matter of much greater importance and would justify your time to a much greater degree. The matter was filed under Sections 1981, 1982 and 1983, Title 42 USCA (Post Civil War Statutes) whereby we raised the question as to whether or not there can be any discrimination in any transaction involving quid pro quo i. e. money which is property produced by federal funds and whether or not in the absence of such equality in the use thereofa state can be enjoined from the collections of taxes on properties owned by negroes.

Thank you for your cooperation.

Very truly yours,

CAREY and PHILLIPS

WILBUR L. PHILLIPS

mg
Enc.
CC: Marvin Karpatkin, Esq.

May 11, 1965

Wilbur L. Phillips, Esq.
411 Redick Tower Building
Omaha, Nebraska

Dear Mr. Phillips:

I have this day received the copy you sent to me of the McNair and Jones briefs filed by the city.

I have not yet read it because I was anxious to tell you quickly that we will be very pleased to help you in any way you wish in your petition with regard to open occupancy laws and ordinances.

With best regards, I am,

Sincerely yours,

Carl Rachlin

CR:YS

CC: Marvin Kapatkin, Esq.
660 Madison Avenue
New York, N. Y.

CAREY AND PHILLIPS
ATTORNEYS
411 REDICK TOWER BUILDING
OMAHA, NEBRASKA

THOMAS D. CAREY
WILBUR L. PHILLIPS
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TELEPHONE
341-7728

JUN 1 1965

May 27, 1965

Omaha
Nebraska

Mr. Carl Rachlin
General Counsel - CORE
38 Park Row
New York 38, New York

Mr. Robert C. Oberbillig, Esquire
633 Insurance Building
Omaha, Nebraska

Mr. John P. Miller, Esquire
707 City National Bank Building
Omaha, Nebraska

Gentlemen:

Please find enclosed photo copy of:

(1) L. B. 119 which passed the Nebraska Legislature on May 13th, 1965;

(2) Copy of the Complaint in Civil No. 02283 in the United States District Court for the District of Nebraska, together with a designation of place of trial therein, both of which were filed on April 30, 1965;

(3) Motion and Notice of hearing filed by Clarence A. H. Meyer, Attorney General of the State of Nebraska, together with request for oral argument;

(4) Motion and Notice of hearing filed by Herbert M. Fitle, City Attorney for the City of Omaha, together with request for oral argument.

Carl you have already received a copy of the petition and the State's Motion is a carbon copy in that they sent us two.

Pursuant to earlier conversations with John Miller and Bob Oberbillig, I am requesting that John prepare a Memorandum Brief in support of the State's Motion to dismiss and that Bob prepare a Memorandum Brief in support of the City's Motion to dismiss. Carl, I am requesting that you prepare a

Memorandum Brief in support of my position that the Motions, both Motions, should be denied.

From preliminary examination I am of the opinion that some of the demands of both motions are good and to that extent I expect to confess the motions and move for leave to amend. It is my feeling that the area where they claim that the remedy at law is adequate involves subsection (1) of section One of Chapter 81-881 as it applies to real estate brokers in L. B. 119. If there are any questions, please feel free to call.

Thank you for your cooperation.

Very truly yours,

CAREY and PHILLIPS

WILBUR L. PHILLIPS

mg
Encs.
cc: Rev. Rudolph E. McNair
Chairman of Steering Committee
Co-ordinating Commitee for Civil Liberties (Citizens)
c/o Zion Baptist Church
2215 Grant Street
Omaha, Nebraska

Nebraska CORE

KARPATKIN, OHRENSTEIN & KARPATKIN

35802

IN THE
SUPREME COURT OF NEBRASKA

STATE OF NEBRASKA,
Plaintiff and Appellee,
vs.

KELSEY JONES,
Defendant and Appellant.

APPEAL FROM THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA
Hon. James P. O'Brien, District Judge

BRIEF OF APPELLANT

THOMAS D. CAREY,
WILBUR L. PHILLIPS,
Attorneys for Appellant.

Law Briefs—OMAHA LINO-SLUG PRINTING CO., 418 So. 15th St.

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JAN 27 1965
KARPATKIN, OHRENSTEIN & KARPATKIN
For ______________________

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General No. 35802

IN THE

SUPREME COURT OF NEBRASKA

STATE OF NEBRASKA,
Plaintiff and Appellee,
vs.
KELSEY JONES,
Defendant and Appellant.

APPEAL FROM THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

Hon. James P. O'Brien, District Judge

BRIEF OF APPELLANT

STATEMENT OF QUESTIONS INVOLVED

I. The principal question involved in this case is of course whether or not there is sufficient legal evidence to enable the jury to determine as a matter of fact that these defendants were guilty of violating Ordinance Number 25.33.010 of the City of Omaha classified as disturbing an assemblage. Collateral to this issue are the following questions which must be decided before there can be a decision on the ultimate issue of fact:

II. What is the definition of a disturbance as that term would apply to an interruption of a meeting of the City Council of the City of Omaha?

III. What is the necessary evidence to enable the State to make out a prima facie case on a charge of violating the ordinance above set forth?

IV. What is the standard for the making of a determination that such disturbance has in fact occurred?

V. In a trial of these questions under what circumstances may a defendant be treated as having waived his right to object to defects in the proof as presented by the State?

STATEMENT OF THE CASE

According to the Bill of Exceptions it would appear that at or about 3:30 o'clock P. M., on October 22, 1963, the two defendants together with some 47 other people who were seated in the City Council Chamber of the City of Omaha, Nebraska, stood and began singing the "National Anthem" (20-21:119) following which the defendants together with the other persons sang another song in the nature of a hymn, called "We Shall Overcome" (11-14:120, 5-23:121). Throughout the bill of exceptions the conduct was referred to as a "demonstration" (11-16:122), "communication" (12-20:115), and sometimes simply as "it" (2:21).

Throughout and during the course of this activity, the evidence indicates that the President of the City Council, Mr. Harry Trustin, stated "what do I do now" (10-12:4, 2-8:30); there was also testimony that the Council President undertook to stop the activity (2-4:30, 23-25:3, 1-3:50, 11-12:62, 16-22:41). Following this it appears as though Councilman, Ernest Adams, made a motion to suspend the meeting for the duration of the demonstration (16-22:49) after which the defendants were requested or advised to stop singing by Lieutenant Louis Stokes, of the Omaha Police Department (24-25:75, 1-11:76) and upon failing to do so, they were arrested and charged with two offenses one of which is the subject of this case.

o———o———o

ASSIGNMENTS OF ERROR

1. That the verdict was not supported by the evidence.

2. That the Court erred in failing to give instructions requested by the defendants Numbers II, III, IV, and V, and each of them.

3. That the Court erred in refusing to receive Exhibits I and II offered by the defendant consisting of the rules of the City Council of the City of Omaha and Section 2.10 and 2.11 of the Home Rule Charter of the City of Omaha, 1956.

4. That the Court erred in refusing the defendants permission to cross-examine various state witnesses, to-wit: Albert L. Veys, Warren R. Swigart, Arthur D. Bradley, Jr., Ernest A. Adams, and Stephen T. Novak, concerning specific occurrences at City Council meetings tending to show customs and usages and the rules of the City Council.

5. That the Court erred in failing to sustain defendants' motion for a directed verdict, or in the alternative to grant defendants' motion for a new trial, or judgment notwithstanding the verdict.

6. That the Court erred in overruling the defendants' objection to argument by the prosecutor that he, the prosecutor, had personal knowledge that City Council meetings are not carried on in the manner described by the defendants.

7. That the Court erred in overruling the defendants' objection to the offer of the opinion and conclusion of the witness Albert L. Veys that the defendants' conduct was unusual and not permitted by the Rules of the City Council and in overruling the defendants' objection to a similar offer, without sufficient foundation, of testimony of Mr. Warren R. Swigart. That the defendants wish to incorporate in this assignment of error all similar testimony offered by the witnesses, Arthur D. Bradley, Jr., Ernest A. Adams, and Stephen T. Novak, all of which was equally prejudicial to the interest of the defendants and each of them.

o——o——o

PROPOSITIONS OF LAW

I.

The determination of the standard of conduct that constitutes a disturbance of a public meeting or assembly depends upon the nature and character of each particular kind of meeting, the purpose for which it is held, and the usage and practice governing such meetings. The determination of the standard of conduct resulting in a disturbance of a meeting of the City Council of the City of Omaha, must depend upon the established rules, usages and customs for conduct of meetings of the City Council of the City of Omaha.

Vol. 17, Am. Jur., Disturbing Meetings, Sec. 6, p. 222.

Gaddis vs. State, 105 Neb. 303, 180 N. W. 590.

II.

Every deliberative assembly has the right to decide who may be present during its session; and when the assembly, either by a rule or by a vote, decides that a certain person shall not remain in the room, it is the duty of the chairman to enforce the rule of order, using whatever force is necessary to eject the party.

Part II, Article XIII, Section 73, Roberts Rules of Order, revised 75th Anniversary Edition, 1951.

III.

Congress shall make no law * * *; abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble, and to petition the government for a redress of grievances.

Article of Amendment I, Constitution of the United States.

Article I, Section XIX, Constitution of the State of Nebraska.

IV.

No person shall be deprived of life, liberty, or property, without due process of law.

Article of Amendment XIV, Section I, Constitution of the United States.

Article I, Section III, Constitution of the State of Nebraska.

V.

Under the home rule charter of the City of Omaha, 1956, all regular and special meetings of the Council are to be open to the public, no ordinance, resolution, rule, regulation, order, or directive may be adopted except as a meeting open to the public, and the City Council is empowered to effect rules for the conduct of its meetings and required to cause the city clerk to keep a journal of its proceedings, which shall show every matter considered by it, its disposition, and the yeas and nays on every matter submitted for a vote.

Sections 2.10 and 2.11, Home Rule Charter of the City of Omaha, 1956.

VI.

The City Council of a city of the metropolitan class, as a legislative body, has the power, to establish and adopt rules for its own government in matters of procedure; and, such rules, when adopted, will not be set aside or ignored by Courts, unless they are directly, or by necessary implication, in conflict with some provisions of the statute.

State ex rel. Thompson, Attorney General vs. Neble.

State ex rel. Thompson, Attorney General vs. Latenser, 82 Neb. 267, 117 N. W. 723.

State ex rel. Bishop vs. Dunn, et al., 76 Neb. 155, 107 N. W. 236.

Best vs. The City of Omaha, 138 Neb. 325, 293 N. W. 116.

VII.

In all judicial proceedings, disputed facts must be established by the best means attainable and evidence indicating on its face that it is secondary and that original source of information is in existence and accessible cannot be received.

Application of Chicago Northwestern Railway, et al. vs. City of Norfolk, 157 Neb. 594, 60 N. W. 2d 662.

Bitler vs. Terri Lee, Inc., 163 Neb. 833, 81 N. W. 2d 318.

VIII.

When testimony is given by a witness on direct examination, from which an inference of fact arising favorable to the party producing him, anything within the knowledge of the witness, tending to rebut that inference, is admissible on cross-examination, and the opposing party is entitled to pursue that line of cross-examination as a matter of right.

Larson v. Hafer, 105 Neb. 257, 179 N. W. 1013.

Zimmerman vs. Lindblad, 154 Neb. 453, 48 N. W. 2d 415.

IX.

Aggravated misconduct of counsel, in stating to the jury prejudicial facts outside of the record, and in urging a disregard of the law applicable to the issues and proofs,

may require the reversal of a judgment on a verdict in his client's favor.

Hansen vs. Mallett, 101 Neb. 339, 163 N. W. 145.

X.

Parol evidence is inadmissible to contradict expressed recitals of written records of city with regard to the legislative acts of its legislative body.

Herzoff vs. City of Omaha, 124 Neb. 785, 248 N. W. 314.

Barrett vs. Hand, 158 Neb. 273, 63 N. W. 2d 185.

XI.

Legislature may not impose upon courts performance of nonjudicial duties or delegate to them any legislative power.

A judicial act is determination of what existing law is in relation to some existing thing already done or happened, while "legislative act" is predetermination of what law shall be for regulation of all future cases falling under its provisions.

C. R. T. Corporation vs. Board of Equalization, in the County of Douglas, 172 Neb. 540, 110 N. W. 2d 194.

* * *

STATEMENT OF FACTS

The defendants' Statement of Facts is identical to their Statement of the Case.

* * *

ARGUMENT

The difficulty of arriving at conclusions with regard to this case lies in a substantial absence of precedent on the facts and a bare minimum of precedent on the law as it would appear to apply in this particular situation. Indeed we have failed to find a single case which would appear to be specifically in point and, for this reason, we have resorted to the device of analogy in order to explore the questions which we deem to be involved herein.

The defense, at this point, takes the position that the prosecution proceeded with four basic issues of fact in mind.

(A) That the rules of the City Council did not permit these defendants a legal right to the conduct of standing and singing and marching in the City Council Chamber; (10-17:3, 2-3:20, 12-25:20, 1-22:21, 22-25:44, 1-5:45, 1-3:49, 11-13:61, 22-25:66 and 1-17:67)

(B) That the procedure followed by the members of the City Council was in conformity with the rules of the City Council of the City of Omaha; (15-25:1, 1-25:2, 1-9:3, 17-25:3, 1-25:4, 1-10:5, 4-11:10, 1-2:22, 22-25:25, 1-12:26, 17-25:27, 1-25:28, 1-14:29, 25:29, 2-25:30, 23-25:37, 1-18:38, 17-25:39, 15-17:40, 6-25:41, 21-25:48, 4-25:49, 1-25:50, 1-5:51, 19-25:61, 1-14:62, 21-25:62)

(C) The customs and usages of the City Council of the City of Omaha did not permit conduct complained against; (11-18:6, 12-25:20, 1-22:21, 4-15:22, 12-16:27, 15-24:29, 18-25:40, 1-5:41, 6-23:51)

(D) All of which were sufficiently familiar to the defendants to bind them with knowledge of their application to the conduct involved herein; (22-25:21, 16-25:22, 1-25:23, 6-25:45).

Whereupon the state repeatedly illicited evidence from its witnesses that:

(1) the usual procedure for a person wishing to be heard by the City Council was to have oneself placed upon the agenda and, in the absence of that, to obtain permission from the council, on the day in question, which permission could be granted by a vote of the Council at that time;

(2) that the conduct of the defendants made it practically impossible to continue the meeting of the City Council on October 22, 1963;

(3) that the conduct which took place was unusual; and,

(4) that the defendants on at least one prior occasion had requested and received a place on the agenda, had appeared and spoken before the Council and had received a response to the matter in which they were interested.

The defendants submit that the record is significant in the following particulars; as to subparagraph (1): the witness, Albert L. Veys, on direct testimony, testified (2-25:2, 1-7:3, 10-17:3) to matters relating to the conduct of business of the City Council on October 22, 1963, including the subject under discussion and the persons participating in the discussion part of which included a statement as to whether or not the defendants were on the agenda, which testimony included a statement that he would rather "check the transcript to be sure." During the testimony of this witness the Court (8-9:4, 11-14:5) specifically requested more precise information as to the procedure used by the Council in the conduct of its meetings. Further, with regards to this subparagraph the witness, Warren R. Swigart (2-25:20, 1-25:21, 1-18:22), testified on the rules of the Council, the procedure used on the day in question, and from his recollection of the testimony of the defendants at City Council meetings preceding the day in question, all from his recollection and all of which clearly suggests the existence of specific rules, recorded transcripts and a printed agenda. Similar testimony was brought forth by the witnesses, Arthur Bradley, Ernest Adams, and Stephen Novak. Now, during the direct testimony of the witness, Albert Veys (22-25:5, 1-15:6), Mr. Veys testified as to the existence of rules for appearing before the City Council and was asked, with regards to the alleged conduct of the defendants whether or not "this was a usual thing to occur in the Council Chambers." To this the defendant objected as calling for an opinion and conclusion of the witness and (15:6) this objection was apparently overruled. Similarly the witness, Warren R. Swigart (29:25) was asked whether the defendants were asked to desist on October 22, 1963, to which question defendants objected as insufficient foundation and the record is silent as to a ruling but the witness did answer the question either by way of ignoring the objection or as the result of having received permission from the Court which did not make its way into the record herein. Similarly, the witness, Arthur Bradley, was asked (25:40, 1:41) if this was a usual incident and he responded that it was an unusual incident to which the defendants objected as calling for a conclusion and a motion to strike the answer. Both of which were overruled. Similar question was asked of the witness, Ernest Adams (14-20:51) and at this point the objection of the defendant was sustained. It was during the testimony of this witness that the defendant offered Exhibit "I" (page 56) to which the plaintiff objected and the Court reserved ruling until the end of all of the defendants' evidence (9-17:145) at which time the objection was sustained. As to subparagraphs (3) and (4) the defendants made repeated attempts to cross-examine the witnesses who were members of the City Council, to-wit: Albert L. Veys, Warren R. Swigart, Stephen T. Novak, Arthur D. Bradley, Jr., and Ernest A. Adams (17-25:11, 1-25:12, 1-25:13, 1-3:14, 13-25:31, 1-12:32, 6-21:36, 1-15:64), with regards to their testimony that this conduct or conduct of this type was unusual and had never occurred before and each instance cross-examination was restricted by the Court upon objection of the plaintiff.

The defendants submit that the proper order of proof would have required the state, itself, to offer into evidence appropriate sections of the Home Rule Charter of the City of Omaha, appropriate sections of the rules for the conduct of meetings of the City Council of Omaha, appropriate copies of the transcript or journal of the meetings alluded to for the Omaha City Council and appropriate copies of the printed agenda alluded to on direct testimony with regards to the occurrences otherwise deemed to be material and relevant herein. We believe there could be no doubt that all of this evidence was available, was shown to be obviously available by the testimony of the State's witnesses and without some showing specifically that the evidence was unavailable, lost or destroyed the blanket otherwise unsupported testimony of the witnesses themselves was secondary, conclusive, without sufficient foundation and received not only to the prejudice of the defendants but to the prejudice of a proper finding of fact herein.

With regards to testimony by the witnesses for the state that the defendants' conduct was unusual, the defendants submit that the effect of such testimony was to open the door to cross-examination of each witness so testifying as to the conduct of every single City Council meeting which came within the knowledge of each particular witness testifying that the conduct of these defendants on the particular day in question was unusual and not within the customs and usages of the Council itself.

Having concluded, as we do, that there was a failure of proof on behalf of the State on its failure to offer the rules and the Home Rule Charter of the City Council and the journal and agenda of the City Council meetings on the day in question, we then approach the matter as to whether or not the defendants by the nature of their cross-examination of the State's witnesses have waived their right to object for this particular failure of proof? We conclude that it is too elementary for argument that the only body that has the jurisdiction to make a determination as to whether or not the City Council of the City of Omaha is being subjected to a disturbance is the City Council of the City of Omaha. Of necessity this determination must be made according to its rules and its standard of conduct and its customs and usages. It follows therefore that unless and until the Council itself has acted according to its rules any other activity either by the Public Safety Director or by a Court is of itself an interference in the legislative process reserved to the City Council of the City of Omaha.

Examining the evidence, as we have, in the light most favorable to the plaintiff State, we necessarily must conclude that for us to make a determination involving the conduct of the meetings of the City Council without there having been a determination by the City Council itself would be an unconstitutional usurpation of the jurisdiction of the City Counsel.

But, even if this were not so, the jury was permitted to examine a movie which was admittedly edited and inaccurate and was therefore irrelevant for any purpose (15-25:155, 1-15:156). In addition we are obliged to point out argument used by counsel for the State (19-25:166, 1-9:167) to which the defense objected which we believe to be so flagrantly and obviously an act of misconduct on the part of the counsel for the State that we wish merely to point it out to the Court without belaboring the point with further argument herein.

CONCLUSION

We submit further that the record is clear that at no time did the President of the City Council or the Sergeant-at-Arms under the rules of the City Council or anyone authorized and appointed by the President of the City Council approach the defendants or either of them with regard to eliminating the disturbance or removing the defendants as a cause of a disturbance. In closing the defendants submit under the evidence in this case the complaint should be dismissed against both defendants and each of them.

Respectfully submitted,

THOMAS D. CAREY,
WILBUR L. PHILLIPS,
Attorneys for Appellants.

HER
EDW
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CHA
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Law

35801, 35802

IN THE

SUPREME COURT OF NEBRASKA

No. 35801

STATE OF NEBRASKA,
Plaintiff and Appellee,
vs.

RUDOLPH E. McNAIR,
Defendant and Appellant.

No. 35802

STATE OF NEBRASKA,
Plaintiff and Appellee,
vs.

KELSEY JONES,
Defendant and Appellant.

APPEAL FROM THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA
Hon. James P. O'Brien, District Judge

BRIEF OF PLAINTIFF AND APPELLEE

ERBERT M. FITLE, City Attorney,
DWARD M. STEIN, Deputy City Attorney,
ALTER J. MATEJKA, Ass't City Attorney,
HARLES A. FRYZEK, City Prosecutor,
LLEN L. MORROW, Ass't City Prosecutor,
Attorneys for Plaintiff and Appellee.

Law Briefs—OMAHA LINO-SLUG PRINTING CO., 418 So. 15th St.

General Nos. 35801, 35802

IN THE

SUPREME COURT OF NEBRASKA

No. 35801

STATE OF NEBRASKA,
Plaintiff and Appellee,
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Defendant and Appellant.

No. 35802

STATE OF NEBRASKA,
Plaintiff and Appellee,
vs.

KELSEY JONES,
Defendant and Appellant.

APPEAL FROM THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA
Hon. James P. O'Brien, District Judge

BRIEF OF PLAINTIFF AND APPELLEE

STATEMENT OF THE CASE

The defendant was charged with violation of a city ordinance of the City of Omaha, as set forth in the Omaha Municipal Code, Section 25.33.010, page 580, as follows:

> "Loud and Indecent behavior unlawful. It shall be unlawful for any person to disturb any lawful assemblage of people or to disturb any congregation or assembly where religious worship is being held by making any noise or by loud or indecent behavior."

A complaint was filed in the Municipal Court of the City of Omaha, Douglas County, Nebraska, on the 31st day of October, 1963, charging that the defendant violated the above ordinance of the City of Omaha, on the 22nd day of October, 1963, by disturbing the Council of the City of Omaha, while the Councilmen were assembled in a regularly scheduled Council meeting in the City of Omaha, Nebraska (T4-5).

The defendant was tried on the above complaint, in the Municipal Court of the City of Omaha, Douglas County, Nebraska, on the 21st day of November, 1963. The defendant was found guilty and sentenced to pay a fine of $1.00 and costs of prosecution (T2-3).

The defendant commenced an appeal from the Municipal Court of the City of Omaha, Douglas County, Nebraska, to the District Court of Douglas County, Nebraska, on the 21st day of November, 1963, and said appeal was perfected on the 27th day of November, 1963 (T2-8).

On the 27th day of January, 1964, trial was commenced to a jury in the District Court of Douglas County, Nebraska, on the complaint as hereinbefore set forth (T4-5), and the trial was concluded on January 28, 1964 (T12-23). The defendant was found guilty of said charge by the jury (T23) on the 28th of January, 1964, and was sentenced by the Court on the 18th day of February, 1964, to pay a fine of $1.00 and costs of the prosecution (T26-27).

PROPOSITIONS OF LAW

I.

Any conduct contrary to the usages of a particular sort of meeting and class of persons assembled and which interferes with its due process or is annoying to the assembly in whole or in part is a disturbance.

State vs. Mancini, 91 Vt. 507, 101 Atl. 581.

Ford vs. State, 210 Tenn. 105, 355 S. W. 2d 102.

People vs. Malone, 141 N. Y. Supp. 149.

II.

An officer may arrest without a warrant for a breach of peace committed in his presence, and in some circumstances to prevent a breach of the peace.

State vs. Mancini, 91 Vt. 507, 101 Atl. 581.

* * *

STATEMENT OF FACTS

The City Council of the City of Omaha, hereinafter referred to as the Council, held a regularly scheduled meeting on Tuesday, October 22, 1963, convening at approximately 2:00 o'clock P. M. (1:11-25, 19:11-17, 20:10-11, 37:12-15, 37:23-25, 38:1, 38:4-5, 48:13-15, 48:21-25, 61:11-13, 61:19-23, 75:10-15).

The Council then commenced hearing matters on the Council agenda (2:2-8, 2:14-21, 26:24-25, 27:1-6, 38:13-15, 49:4-6, 61:24-25, 62:1) when at approximately 2:37 P.M., the meeting was disrupted by singing and marching in the Council Chamber by the defendants and others, who did not have any matters on the Council agenda, making it necessary to discontinue the Council business until the defendants and others were removed from the Council Chambers (75:19-23, 2:22-25, 3:1-25, 4:1-5, 4:13-25, 5:1-10, 5:15-21, 5:23-6:10, 17:14-21, 26:2-12, 27:20-25, 28:1-29:14, 29:25, 30:2, 30:9-10, 38:10-18, 39:17-40:17, 41:6-25, 49:7-50:23, 51:1-5, 62:2-15, 77:1-9, 80:2-3, 130:10-19, 138:23-25, 139:4-5, 140:19-23.

A stipulation was made that the City Council of the City of Omaha is the legislative branch of the City Government of the City of Omaha (146:4-9).

* * *

ARGUMENT

I.

Any conduct contrary to the usages of a particular sort of meeting and class of persons assembled and which interferes with its due process or is annoying to the assembly in whole or in part is a disturbance.

In the case of *State vs. Mancini,* 91 Vt. 507, 101 Atl. 581, the Supreme Court of the State of Vermont held:

> "Speaking generally, the rule applicable to disturbances of public assemblies is that any conduct which, being contrary to the usages of the particular sort of meeting and class of persons assembled, interferes with its due process, or is annoying to the assembly in whole or in part, is a disturbance."

The Court further stated:

> "A breach of the peace is described as 'a violation of public order; the offense of disturbing the public peace.' The public peace is that sence of security and transquility, so necessary to one's comfort, which every person feels under the protection of the law;

> and a breach of the peace is an invasion of the protection which the law thus affords."

The Court further stated:

> "A violation of public order or decorum, if calculated and intended to disturb the public tranquility, may constitute a breach of the peace."

In the case of *Ford vs. State,* 210 Tenn. 105, 355 S. W. 2d 102, the Supreme Court of the State of Tennessee held:

> "The Court in the case of Holt v. State, 60 Tenn. 192, ruled that it was only necessary that the act attract the attention of any part or parts of the assembly to constitute a violation of the statute. This act undoubtedly attracted the attention of a great portion of this assembly if not all of it, but the defendants' act even went further than that which is required under the rule in the Holt case, supra, because their act completely interrupted the service. We are, therefore, of the opinion that there is more than ample proof contained in this record to support the verdict of the jury."

In the case of *People vs. Malone,* 141 N. Y. Supp. 149, the Supreme Court, Appellate Division, Second Department of the State of New York, stated:

> " 'To disturb' is to throw into disorder; to move from a state of rest or regular order; to interrupt; to throw out of course or order."

The Court further stated:

> "Chief Justice Shaw also said in the same judgment that what shall constitute a disturbance cannot easily be brought within a definition applicable to all cases. It must depend on the nature and character of each particular kind of meeting and the purposes for which it is held, and much on the usage and practice gov-

erning such meetings; that each case presents a question of fact."

Also in the case of *People vs. Malone*, supra, the Court stated:

> "Thoughtful men and women recognize that the principle of woman suffrage is supported by cogent arguments. The arguments should receive due consideration, and the agitation of the subject should not be stilled by any oppression. But there is no argument in violations of law, and agitation in forms that fall foul of the penal law must be suppressed. If the courts overlook violations of such law for the sake of such propagandism of any cause as is in disobedience of such law, the courts fall into contempt and the lawless take heart."

It appears that the case before this Court is in accord with the case of *People vs. Malone* in the State of New York, and that the last statement quoted from the Court is very appropriate in this case.

II.

An officer may arrest without a warrant for a breach of peace committed in his presence, and in some circumstances to prevent a breach of the peace.

In the present case there has been a question raised whether or not the police officers should have made the arrests in this particular case or whether the Sergeant-at-Arms of the City Council should have made the arrests. As is shown in the transcript, there were numerous police officers in the Council chambers on the date in question who were present when the disturbance took place.

In the case of *State vs. Mancini*, supra, the Supreme Court of the State of Vermont held:

"An officer may arrest without a warrant for a breach of peace committed in his presence, and in some circumstances to prevent a breach of the peace

It is evident from the record that the arresting officers were in the audience of the City Council Chambers at the time of this disturbance, therefore had the right to make the arrests.

III.

Careful examination of the appellant's brief discloses that there are set forth eleven (11) Propositions of Law; however, in the argument which follows, the appellant fails to cite or refer to a single case or alleged authority or to in fact argue any of the Propositions of Law.

Inasmuch as the Revised Rules of the Supreme Court of the State of Nebraska, 1963, Section 8, Briefs, propositions, subsection (4) states: "* * * no authorities shall be cited under any proposition that are not quoted from or discussed in the argument in connection therewith," the appellee feels constrained to refrain from including in its brief any rebuttal, refutation or distinction of matters not presented or argued by the appellant.

* * *

CONCLUSION

From the foregoing Propositions of Law and Argument, the plaintiff-appellee respectfully requests the Court to affirm the verdict of the District Court.

Respectfully submitted,

By: **Herbert M. Fitle,** City Attorney,
Edward M. Stein, Deputy City Attorney,
Walter J. Matejka, Ass't City Attorney,
Charles A. Fryzek, City Prosecutor,
Allen L. Morrow, Ass't City Prosecutor,
Attorneys for Plaintiff-Appellee.

35801, 35802

IN THE

SUPREME COURT OF NEBRASKA

No. 35801

STATE OF NEBRASKA,
Plaintiff and Appellee,
vs.
RUDOLPH E. McNAIR,
Defendant and Appellant.

No. 35802

STATE OF NEBRASKA,
Plaintiff and Appellee,
vs.
KELSEY JONES,
Defendant and Appellant.

APPEAL FROM THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA
Hon. James P. O'Brien, District Judge

REPLY BRIEF OF DEFENDANTS AND APPELLANTS

THOMAS D. CAREY,
WILBUR L. PHILLIPS,
Attorneys for Defendants and Appellants.

Law Briefs—OMAHA LINO-SLUG PRINTING CO., 418 So. 15th St.

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STATUTE CITED

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General Nos. 35801, 35802

o——o——o

IN THE

SUPREME COURT OF NEBRASKA

o——o——o

No. 35801

STATE OF NEBRASKA,
Plaintiff and Appellee,
vs.
RUDOLPH E. McNAIR,
Defendant and Appellant.

o——o——o

No. 35802

STATE OF NEBRASKA,
Plaintiff and Appellee,
vs.
KELSEY JONES,
Defendant and Appellant.

o——o——o

APPEAL FROM THE DISTRICT COURT OF
DOUGLAS COUNTY, NEBRASKA
Hon. James P. O'Brien, District Judge

o——o——o

REPLY BRIEF OF DEFENDANTS AND APPELLANTS

o——o——o

STATEMENT OF THE CASE

The defendants and appellants hereby adopt and restate their statement of the case as originally prepared in the brief of appellants.

PROPOSITIONS OF LAW

I.

The determination of the standard of conduct that constitutes a disturbance of a public meeting or assembly, depends upon the nature and character of each particular kind of meeting, the purpose for which it is held and the usage and practice governing such meetings.

State vs. Mancini, 91 Vt. 507, 101 Atl. 581.

Ford vs. State, 210 Tenn. 105, 355 S. W. 2d 102, 84 S. Ct. 1901.

People vs. Malone, 141 N. Y. Supp. 149.

Bell vs. State of Maryland, 227 Md. 302, 176 A. 2d 771, 84 S. Ct. 1814.

Doggett vs. Hooper, 306 Mass. 67, 27 N. E. 2d. 737 (740).

II.

Where A. unlawfully attempts to arrest B., B. is justified in resisting; and if A. so presses B. as to make it necessary for him to choose between submission and killing A., then the killing A. is not even manslaughter.

Nelson vs. State, 33 Neb. 528, 50 N. W. 679.

Simmerman vs. State, 14 Neb. 568, 17 N. W. 115 (16 Neb. 615, 21 N. W. 387).

III.

The Judges of the Supreme Court shall during the month of January in each odd numbered year devise the general rules of said Court and adopt such additional rules as may be deemed necessary or appropriate for the dispatch of business before said Court, including rules for the advancement of pending cases.

Chapter 24, Section 24-210, R. S. Neb. 1943, as amended.

STATEMENT OF FACTS

Defendants and appellants adopt and restate the statement of facts set forth in the brief of appellants.

o———o———o

ARGUMENT

Division I

At the outset the defendants and appellants wish to extend their apologies to both the Court and to the appellee for the oversight set forth in Division III of the appellee's argument. However, as set forth in R. S. Neb. 24-210, the reason for the rule is for the "advancement of pending causes" and the appellants submit and acknowledge and restate the opening sentence (page 9 of the appellants' brief and argument "the difficulty of arriving at conclusions with regard to this case lies in a substantial absence of precedent on the facts and a bare minimum of precedent on the law as it would appear to this particular situation." That is to say that none of the cases cited by either the appellants or the appellee would appear to be clearly and specifically in point. On the other hand, the appellants submit that an examination of the argument itself will easily relate specific propositions of law with the accompanying citation to the specific points involved in the argument portions of the appellants' brief and argument, to-wit: Propositions I, II, III, IV, V, and VI, to the first full paragraph on the bottom of page 12; Propositions VII and VIII to the first full paragraph on the top of page 13; Propositions X and XI to the second full paragraph on page 13 and the third paragraph beginning on page 13 and ending at the top of page 14; Proposition IX to the second sentence of the last paragraph of the appellants' argument on page 14.

Division II

With regards to Proposition of Law Number I of appellee's brief and argument, the appellants could well have adopted the proposition as there stated in that not one of the statements of fact was in point with the facts existing on the record of this appeal. In *State vs. Mancini,* 91 Vt. 507, 101 Atl. 581, an arrest was made in a Grange Hall during the progress of a dance wherein a deputy sheriff, not identified as such, arrested the defendant for walking through the hallway carrying bottles. The rule laid down in the appellee's Proposition II, when applied to the facts of the case, placed the law of that case squarely in opposition with Nebraska law of arrest as set forth in *Nelson vs. State,* 33 Neb. 528, 50 N. W. 679, and *Simmerman vs. State,* 14 Neb. 658, 17 N. W. 115 (16 Neb. 615, 21 N. W. 387).

In *People vs. Malone,* 141 N. Y. Supp. 149, the defendant was arrested for disturbing the Kings County General Democratic Committee at a political meeting during the address of one of several speakers. While the report of the case does not indicate whether or not the question of the application of rules for the conduct of such meetings was ever raised the report does indicate an effort on the part of the chairman to silence the defendant and that the defendant continued in specific disobedience of the ruling of the chairman. However, *Doggett vs. Hooper,* 306 Mass. 67, 27 N. E. 2d 737 (740), in which both the *Malone* and *Mancini* cases are cited, a better application of the rule appears to be set forth. There the defendant was detained in specific compliance with a specific statute provided for in such cases which is specifically applied to the type of meeting that was being held. The Court, at page 740 of the North East Reporter, stated "it is clear that, in stating that the judgment of the moderator if made in good faith, even if mistaken, was not subject to review by the Court, the Judge was referring to the authority and duty of the moderator to decide questions of order. In this there was no error. The moderator was empowered by statute to decide the question and, the legislature having entrusted the determination to such an officer, the Court, where as here, his action was neither malicious nor dishonest, cannot substitute his judgment for his *[the moderator]." The appellants submit that the rule is on all fours with the Proposition of Law Number I stated both in this reply brief and in the appellants' original brief and argument.

Ford vs. State 210 Tenn. 105, 355 S. W. 2d 102, 84 S. Ct. 1901, appears to have resulted from a "sit in" demonstration which took place during an assemblage of persons for a religious meeting on August 30, 1960. While it appears as though the real reason for the "sit in" demonstration and the real issue in the case dealt with a custom of racial segregation in the State of Tennessee; and while, also, there is no evidence that the existence and/or application of a specific rule of the organization was ever raised, nevertheless the case is probably more nearly in point than either of the other two (*Mancini* or *Malone,* supra). On the other hand, an interesting development with regard to *Ford vs. State,* exists in its application for certiorari to the United States Supreme Court which was denied with the dissent of Associate Justice Douglas (84 S. Ct. 1901) and which is referred to during the drafting of a dissent by Justice Goldberg in *Bell vs. State of Maryland,* 84 S. Ct. 1814 (1867). It is evident that we have not yet seen the last of *Ford vs. State* and that its meaning as a precedent is, to date, in substantial doubt.

---

* Brackets ours.

CONCLUSION

From the foregoing propositions of law and argument the defendants-appellants respectfully submit that under the evidence and the record in this case the complaint should be dismissed against both defendants and each of them.

Respectfully submitted,

THOMAS D. CAREY,
WILBUR L. PHILLIPS,
Attorneys for Appellants.

MSS SEDFRE NELSON, WHALEY et al. VS. CLAIBORNE PARISH SCHOOL BD. HOMER LOUISIANA 1967 Box 39
(SCHOOL CASE) Folder 21

te Historical Society of Wisconsin

Please Retain Original Order

CERTIFICATE

I hereby Certify that a copy of the above report has this day been mailed by United States mail, to counsel of record as follows, JOHN DOAR, Assistant Attorney General, Department of Justice, Washington, D. C. 20530; Edward L. Shaheen, United States Attorney, Post Office Building Shreveport, Louisiana; Collins, Douglas & Elie, 2211 Dyrades Street, New Orleans, Louisiana, Atten. Nils R. Douglas, Esq.; Harris David, Esq., 932 Royal Street, New Orleans, Louisiana; Alvin J. Bronstein, Esq., 603 North Farish Street, Jackson, Mississippi; Haskell A. Kassler, Esq., One State Street, Boston, Massachusetts; Carl Rachlin, Esq., 38 Park Row, New York, New York, in accordance with the order of Court.

This the 13th. day of June, 1967.

F.C. Haley

F. C. HALEY, SUPERINTENDENT OF
CLAIBORNE PARISH SCHOOLS

HARRY McKENZIE, JR., PRESIDENT

F. C. HALEY, SUPERINTENDENT

Claiborne Parish School Board
415 EAST MAIN
HOMER, LOUISIANA 71040

June 13, 1967

Clerk
Federal District Court
Federal Building
Shreveport, Louisiana

Dear Sir:

In accordance with instructions in Court Order we are submitting the following report on Claiborne Parish Choice Period.

Four thousand sixty one choice applications were sent out. Three thousand eight hundred eighty two were returned. Forty-two transfers were requested and forty-two transfers were granted to date. As of this date we have never refused an application for transfer.

Below are transfers requested and granted during the period of 1965-66 through 1967-68 school sessions:

	1965-66			1966-67			1967-68		
Grade	White	Negro	Total	White	Negro	Total	White	Negro	Total
1	0	2	2	0	0	0	0	6	6
2	0	0		0	0	2	0	4	5
3	0	0		0	0		0	7	8
4	0	0		0	0		0	3	3
5	0	0		0	0		0	6	6
6	0	0		0	0		0	2	2
7	0	0		0	4	4	0	6	7
8	0	1	1	0	1	2	0	1	5
9	0	2	2	0	1	1	0	0	1
10	0	0		0	0	2	0	1	3
11	0	0		0	3	3	0	1	4
12	0	0		0	0		1	4	5
	0	5	5	0	9	14	1	41	55

One Negro transferred from White back to Negro school. Thirty-one additional Negroes transferred to White schools for 1967-68 school session. Ten Negroes transferred from Negro schools to other Negro schools. One White transferred to other White schools. The number of Negro students increased from five in 1965-66 to forty-four in 1967-68. This shows that we have approximately nine times the number enrolled in 1967-68 compared to enrollment for 1965-66.

Transfers of students from one school to that of another school of different race plus the total of previous years are as follows:

School	1965-66	1966-67	1967-68	Total
Athens High School	0	0	0	0
Haynesville High School	2	0	11	13
Homer High School	3	9	16	28
Lisbon High School	0	0	4	4
Summerfield High School	0	0	0	0
				45

Percentages of transfers of Negro students to formerly all White schools by years are: 1965-66 - .015%; 1966-67 - .0314%; 1967-68 - 1% of total number of students enrolled in system as of end of session of 1966-67.

Sincerely yours,

F. C. Haley

F. C. Haley, Superintendent
Claiborne Parish Schools

HWW:evs

Louisiana School Cases

HARRY McKENZIE, JR., PRESIDENT

F. C. HALEY, SUPERINTENDENT

Claiborne Parish School Board

415 EAST MAIN

HOMER, LOUISIANA 71040

September 14, 1967

Clerk
Federal District Court
Federal Building
Shreveport, Louisiana

Dear Sir:

The enclosed information is an effort on our part to satisfy the requirements of the Court Orders of the Western District Court.

The Claiborne Parish School Board has attempted in every manner to carry out a smooth transition of our schools in such a manner as to assure the least amount of friction and confusion. Every child in the Claiborne Parish School system was given his choice of entering any school that he desired. No child was denied his first choice. The only changes made were instituted by the parents of the children involved or the children themselves and in proven hardship cases. In some instances children were directed to enter white schools after they had enrolled in their previous school of attendance but could not show where it would be a hardship to attend the white school they had chosen. This necessitated putting some on previously all white buses.

We believe that in the integration of faculties the Claiborne Parish School Board has stepped out in front of other systems in the state in successfully placing a white principal and two white teachers in an all negro school. Realizing that Claiborne Parish is probably one of the most difficult parishes to integrate we think we have had wonderful success in taking these long strides towards satisfying the Court Order and maintaining the peace and good will of both races. We do not want to leave the impression that our program is perfect and satisfies the complete desires of everyone involved. If we are successful in a satisfactory completion of this school session it will be to the everlasting credit of the Claiborne Parish School Board which has so very earnestly and diligently tried to carry out the orders of this court under the most trying circumstances.

Respectfully yours,

F. C. Haley

F. C. Haley, Superintendent
Claiborne Parish Schools

FCH:evs

Enclosures

CERTIFICATE

I hereby Certify that a copy of the above report has this day been mailed by United States mail, to counsel of record as follows, JOHN DOAR, Assistant Attorney General, Department of Justice, Washington, D. C. 20530; Edward L. Shaheen, United States Attorney, Post Office Building, Shreveport, Louisiana; Collins, Douglas & Elie, 2211 Dyrades Street, New Orleans, Louisiana, Atten. Nils R. Douglas, Esq.; Harris David, Esq., 932 Royal Street, New Orleans, Louisiana; Alvin J. Bronstein, Esq., 603 North Farish Street, Jackson, Mississippi; Haskell A. Kassler, Esq., One State Street, Boston, Massachusetts; Carl Rachlin, Esq., 38 Park Row, New York, New York, in accordance with the order of Court.

This the 14th day of September, 1967.

F. C. Haley

F. C. HALEY, SUPERINTENDENT OF
CLAIBORNE PARISH SCHOOLS

Name	Address	Grade	School of Choice	School of Present Attendance	Description of Action Taken By Defendants On His Request and Reasons Therefor
Ruby Jean Nelson	Rt. 2, Box 194 Homer, La.	2	Lisbon	Pineview	Whaley Nelson, grandfather, requested that child be allowed to go back to Pineview because it would work a hardship on him to send the child to Lisbon. The Welfare Department had taken the child away from the mother, Mary Leon Wafer, and placed her in his care. Mary Leon Wafer had signed the Choice Form requesting change from Pineview to Lisbon. Request for change back to Pineview granted because it would work a hardship on Whaley Nelson for child to attend Lisbon.
Rose Marie Mitchell Joy Ann Mitchell	Star Route, Summerfield, La.	2 4	Lisbon Lisbon	Pineview Pineview	Esdell Mitchell, mother, signed Choice Form requesting that these children attend Lisbon School. On August 18, 1967, she wrote a letter requesting that they be allowed to return to Pineview because it would work a hardship on her for them to attend Lisbon School. Request was granted because it would work a hardship.
Brenda Gail Willis	Rt. 1, Box 123 Lisbon, La.	1	Lisbon	Pineview	Mrs. A. H. Willis, mother, wrote letter August 11, 1967, requesting that this child be allowed to go to Pineview with her other sisters and stated that there was some mistake in marking the choice form for Lisbon. She did not want to send one so young to a different school from her sisters. Request was granted because child did not want to go to Lisbon School away from her sisters and it would work a hardship on Mrs. A. H. Willis.
Sherry Dianna Randall Arthedo Randall	Rt. 1, Box 174 Homer, La.	3 7	Homer Homer	Homer Homer	These children entered Hillcrest School on beginning day of school. A letter was sent to mother, Exie V. Randall, directing her to remove these children from the Hillcrest school and send them to Homer Elementary School as she had requested originally on the Choice Forms as no hardship existed that would prevent them from entering Homer Elementary School. The children were directed to ride a school bus that was predominantly white.
Matthew Gilbert, Jr. Anthony Ray Gilbert Vernell V. Gilbert	1601 Memphis St. Homer, La.	3 3 2	Homer Homer Homer	Mayfield Mayfield Mayfield	Mrs. Madgie L. Gilbert, mother, wrote a letter dated September 6, 1967, requesting that her three children be allowed to go back to Mayfield for the 1967-68 school session because they lived two blocks from the Mayfield School and it would work a hardship on her to get them to the Homer School. Request was granted for reason that it would work a hardship on Mr. and Mrs. Gilbert for children to attend Homer School.

Name	Address	Grade	School of Choice	School of Present Attendance	Description of Action Taken by Defendants On His Request and Reasons Therefor
Jessie Lee Buggs	Rt. 2, Box 75 Homer, La.	12	Homer	Mayfield	Jessie Lee Buggs did not enroll in Homer High School on the opening day of school but enrolled in Mayfield High School. When contacted about this, Jessie Lee wrote a letter and brought it to Mr. Haley on September 8, 1967, stating that he had no intention of attending Homer High and didn't know that his Choice Form indicated this until about six days after school was out. He states that he either made a mistake in marking the Choice Form or someone else signed a form for him to go to Homer High School. He felt that if he made a change of schools in his senior year he would be deprived of certain graduation rights and requested that he be allowed to continue at Mayfield School. His requested was granted because it was felt that a hardship case existed here.
Charles Edward Cooper	1410 Lawhorn St. Homer, Louisiana	12	Homer	Mayfield	On August 14, 1967, a letter addressed to Mr. F. C. Haley was received from Lillian Malone, 1840 Park Row, Apartment 4, Dallas, Texas, asking that the choice sheet for Charles Edward Cooper requesting to go to Homer High School be cancelled. She stated that she was engaged to be married and after the marriage she might go to California. On September 8, 1967, Charles Edward Cooper visited Mr. Haley and gave him a letter asking that he be allowed to alter his enrollment from Homer High to Mayfield High School. He stated that since he was a senior he felt that it would be to his disadvantage to enter Homer High and that it would be extremely hard for him to graduate. His request was granted because it was felt that it would work a hardship on Charles.
Verna Jean Banks	1010 Ivory St., Homer, Louisiana	12	Homer	None	Mother, Mrs. Maggie B. Banks, wrote a letter stating that Verna Jean was pregnant and could not attend school.
Tommy Wafer	Moved out of State	12	Homer	California	Mother advised School Board that Tommy was in California.
Ruby Jean Webb	Rt. 3, Box 94, Haynesville, La.	9	Haynesville	Webster Parish	Moved out of Claiborne Parish. Request for transcript received from Webster Parish. Transcript mailed.
Shirley Marie Manning	Rt. 3, Box 71 Homer, La.	11	Haynesville	Webster Parish	Moved out of Claiborne Parish. Request for transcript received from Webster Parish. Transcript mailed.

Name	Address	Grade	School of Choice	School of Present Attendance	Description of Action Taken By Defendants On His Request and Reasons Therefor
Ronnie Benard Henderson	Rt. 1, Box 86 Haynesville, La.	2	Haynesville	Dallas, Texas	Mother, Johnnie Mae Walton, advised principal of Haynesville School that Ronnie was to attend school in Dallas,Texas, for the 1967-68 school session.
Joseph Tell Hamilton	General Delivery, Homer, Louisiana	3	Haynesville	Pineview	This child has been attending Pineview School. Upon checking with the mother as to why he had not transferred to Haynesville School, the Mother stated that the Choice Form received by the School Board was not signed by her but signed by someone other than herself and the school chosen was the school farthest from her home with no transportation available. She requested that this child be allowed to attend the same school he had been attending for two years. Request was granted because of hardship conditions.
Essie Lee Webb Diane Webb	Rt. 3, Box 94, Haynesville, La.	7 7	Haynesville Haynesville	Webster Webster	Moved out of Claiborne Parish. Request for transcripts received from Webster Parish. Transcripts mailed.
Doris Ann Taylor	c/o Currie Taylor Haynesville, La.	3	Haynesville	Woodson	Haynesville Principal received a letter from Currie Taylor, mother, stating that she wanted Doris Ann to return to Woodson School for the 1967-68 session because she felt it would be a financial strain to send her to Haynesville school. Request was granted.
Larry D. Bryant Willie Clyde Bryant Alice Jean Bryant	Rt. 2, Box 256, Homer, La.	6 5 2	Homer Homer Homer	Mayfield Homer Mayfield	Larry Bryant entered Homer School and after a few days of attendance, his mother, Birdteen Bryant sent his teacher a note and also visited the principal requesting that he be allowed to return to Mayfield school because he was mentally retarded, ill, and very unhappy being away from his friends. Her request was granted, because it was felt that he would be a happier child at Mayfield. Willie Clyde Bryant is attending Homer Elementary School in the fifth grade. Alice Jean Bryant enrolled in Mayfield School on opening day. The mother has been directed to enter child in Homer Elementary School unless she can prove this to be another hardship case.
Lizzie Rean Wafer	Rt. 2, Box 126 Homer, La.	8	Mayfield	Pineview	Request received July 19, 1967, that she be allowed to return to Pineview because it would be very difficult for her to make a change this year. Request granted because of hardship.

Name	Address	Grade	School of Choice	School of Present Attendance	Description of Action Taken By Defendants On His Request and Reasons Therefor
Gwendolyn Faye Jackson	1401 Hill St., Homer, La.	12	Mayfield	Woodson	Letter received from Gwendolyn Faye Jackson stating that after she signed the transfer slip she reconsidered because she felt it would be a disadvantage for her to change. Since she was a senior at Woodson High School she felt that transferring to Mayfield might mean that she would fail and lose some of her senior privileges. Requested that she be allowed to continue in school at Woodson. Request was granted because it was felt that a hardship would arise if this student transferred.
Linda Marie Willis	Star Route, Box 3, Homer, La.	10	Mayfield	Pineview	Letter received from Linda Willis requesting that she be allowed to continue at Pineview because there was no bus going from Pineview to Mayfield School and it would work a hardship on her. Her request was granted due to the fact that a hardship existed.
Catherine Williams	Rt. 3, Box 123, Haynesville, La.	6	Mayfield	Woodson	Letter received from Bobbie Jean Williams, mother, states that she has seven children attending Woodson High School, and that these three children signed without her knowledge to attend Mayfield School. She stated that she wished these children to stay in Woodson because she wanted all of them together and that the nearest bus going to Mayfield was two miles from her house and it would be impossible for her to get them to this bus. The bus going to Woodson goes right by her house. Request granted because of hardship for mother.
Delman Williams		3	Mayfield	Woodson	
Mary Jean Williams		8	Mayfield	Woodson	

FACULTY

Name of School	No. of Faculty Members Assigned		No. of Faculty Vacancies	Positions Filled	Race of Teacher	New Teacher	Transfer
	White	Negro					
Athens High School (Athens School was over-staffed by two teachers according to State Department and therefore we have two less teachers in this school)	12		3	1	White	Yes	
Haynesville High School (This school was overstaffed by three teachers according to State Department and therefore we have two less teachers in this school and are still overstaffed by one)	33		7	5	White	4	1 (transferred from Elem. to High School
Hillcrest High School	1	22	3	4	3 Negro, 1 White	4	
Homer High School	32		4	4	White	3	1 (from Lisbon to Homer
Lisbon High School (Lisbon School was overstaffed by one teacher according to State Department. Therefore we have one less teacher in this school.)	8		2	1	White		1 (from Homer to Lisbon
Mayfield High School	2	39	6	6	4 Negro, 2 White	4	2 (from Hillcrest to Mayfield
Mt. Olive Elementary School (Mt. Olive School was over-staffed by one teacher according to State Department and therefore we have one less.)		6	1	0			
Pineview High School	3	18	4	7	4 Negro, 3 White	4	3 (from Mt. Olive (1) from Mayfield (2)
Summerfield High School (Summerfield High School was overstaffed by one teacher according to State Department)	9		3	2	2 White	2	

Name of School	No. of Faculty Members Assigned White	No. of Faculty Members Assigned Negro	No. of Faculty Vacancies	Positions Filled	Race of Teacher	New Teacher	Transfer
Woodson High School	2	30	5	6	4 Negro, 2 White	5	1 (from Mayfield

NUMBER OF STUDENTS BY RACE IN EACH GRADE IN EACH SCHOOL

Athens High School

Grade	Students (White)
1	12
2	11
3	17
4	10
5	17
6	13
7	27
8	17
9	19
10	12
11	12
12	21

Homer High School

Grade	White	Colored
1	65	1
2	56	1
3	53	2
4	55	
5	51	4
6	47	1
7	57	4
8	53	2
9	55	2
10	47	
11	56	1
12	49	

Lisbon High School

Grade	White	Colored
1	9	
2	7	
3	8	
4	6	
5	5	
6	4	
7	11	
8	7	
9	5	
10	7	
11	5	
12	10	

Haynesville High School

Grade	White	Colored
1	57	2
2	47	
3	57	1
4	46	1
5	50	1
6	61	
7	56	
8	65	
9	63	
10	56	1
11	53	
12	51	
Special Education	17	

Hillcrest High School

Grade	White	Colored
1		50
2		47
3		39
4		43
5		43
6		42
7		37
8		33
9		28
10		23
11		28
12		23

Mayfield High School

Grade	White	Colored
1		76
2		63
3		70
4		55
5		70
6		79
7		92
8		59
9		65
10		68
11		52
12		63

NUMBER OF STUDENTS BY RACE IN EACH GRADE IN EACH SCHOOL

Mt. Olive Elementary School

Grade	White	Colored
1		19
2		22
3		17
4		21
5		18
6		17
7		14
8		13

Summerfield High School

Grade	White	Colored
1	7	
2	3	
3	5	
4	8	
5	3	
6	11	
7	12	
8	8	
9	13	
10	9	
11	9	
12	12	

Pineview High School

Grade	White	Colored
1		31
2		32
3		28
4		34
5		33
6		30
7		21
8		42
9		21
10		31
11		18
12		34

Woodson High School

Grade	White	Colored
1		51
2		44
3		48
4		48
5		48
6		49
7		47
8		56
9		57
10		55
11		43
12		48

SEDFRE

STATE OF NEW JERSEY VS. CARTER, EDWARD, 1965 - 1966

storical Society of Wisconsin

Box

Folder 22

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LAW OFFICES
FRANKEL & FRANKEL

LEOPOLD FRANKEL
ESTHER STRUM FRANKEL

262 MAIN STREET
PATERSON, N. J. 07505

523-4600
AREA CODE 201

December 29, 1965

Congress of Racial Equality
38 Park Row
New York City, New York

Att: Carl Rachlin, Esq.

Re: Edward Carter

Dear Mr. Rachlin:

After numerous adjournments by the Court, the appeal of Edward Carter from the Paterson Municipal Court was set down peremptorily for trial de novo in the Passaic County Court on December 21st.

Under the system that we have in Passaic County, of assigning judges to trial, on the very day of the trial, it was not until 9:30 A.M. that morning that I learned from the Assignment Judge that the trial of this case was assigned to Judge Theodore Rosenberg. Judge Rosenberg was appointed to the Passaic County District Court in May of 1965, and in the ordinary course of his duties, hears only civil cases of limited jurisdiction. However, because we have a backlog of cases, in our County Courts and in our Superior Courts, our Legislature provided that the Assignment Judge in any county may assign District Court Judges to hear criminal matters. Therefore, Judge Rosenberg was assigned, though temporarily, to sit on this County Court appeal. As far as I know, it is only with our new Assignment Judge that the District Court Judge was now assigned to County Court.

Until his elevation to the bench, Judge Rosenberg was City Counsel for the City of Paterson. When Mr. Carter, who was in Court with me at the time of the assignment, and I, heard of the assignment, we both felt that Judge Rosenberg was City of Paterson-minded. Yet, at the moment I was not prepared to challenge the propriety of his assignment.

We went to trial Tuesday morning, December 21st, and by 4 o'clock that day we had not finished. That evening, I did some research and I found that Associate Justice Harlan of the United States Supreme Court, on at least one occasion, represented members of the Dupont family before the United States Supreme Court. After his appointment to the Supreme Court, he never participated in the consideration or decision of any case in which Dupont Corporation or any member of the Dupont family was involved. There was at least nine cases that I dug up to that effect.

The next morning, when trial resumed, and after the cross examination of Mr. Carter, who was then on the stand, had been completed, I moved to have the Judge disqualify himself; on the ground that the City of Paterson was a former client of his; the Police Department of Paterson was involved in this suit; and following the precedent set by Associate Justice Harlan, he should disqualify himself. The Judge wanted to know from me whether I felt that he was disqualified from sitting in any matter in which the City of Paterson was involved, for the rest of the time that he would serve as a Judge. I answered that following the precedent of Associate Justice Harlan, my answer is "yes". The Judge reserved decision. Therefore, we proceeded with the trial.

Mr. Carter was charged with "being a disorderly person within the limits of the City of Paterson, to wit: East 18th and Ellison Streets, when the said defendant did interfere with the arrest of two muggers by standing between the police and Howard Benson and Robert Sigler, the two muggers, calling the officers sadists and said they were picking on his people".

At the time the incident is alleged to have taken place, there were five police officers at the scene. Three of the police officers (from the Tactical Squad) testified that they had received a police call from Headquarters that a man had been beaten and robbed at Ellison and Carroll Streets. They proceeded to the scene and found the victim there with a detective. They placed the victim in the car and began to tour the neighborhood slowly, looking for the muggers. They spotted them on East 18th Street and Carroll. While two of the officers jumped out of the car to catch the muggers, one parked the car. One of the muggers escaped and ran into squad car number 10, which also heard the police report and came to the scene. One of the officers got out and helped the other officer catch the fleeing mugger while the second officer in the squad car parked his car, immediately behind the unmarked car of the Tactical Squad. They brought the muggers over to the parked cars and began to interrogate them in the presence of the victim who was there. All of a sudden, they heard a noise in the street and there was Mr. Carter, who was supposed to have shouted at them in a loud voice: "Let my people go, you sadists. You are always picking on my people." Then he elbowed his way into the crowd, causing Sigler, the man who had run before, to try to run again and he had managed to get away a distance of about five feet according to the testimony of some of the officers and a distance of about one foot according to the testimony of other officers.

Then, one of the officers is supposed to have said: "You are under arrest" and since Mr. Carter proceeded in an easterly direction, when they got into their cars, the officers arrested him and brought him to Police Headquarters. The officers denied absolutely that they had ever beaten the muggers. For the record it was stated that the muggers were Negroes; while the police officers knew, in a general way, that there had been demonstrations in Paterson, they claimed not to know what the demonstrations were about, who led them or why they were being held.

Edward Carter took the stand. He told an entirely different story. He related that he was a baker, on his way to work on the night shift, when he saw two men standing on the corner of Ellison and 18th Streets; that squad car number 10 came along and two officers emerged, wielding clubs and set themselves on the two men, beating them and shouting at them: "You black bastards, we've got you now." One of the men ran across the street diagonally and then at that point the Tactical Squad came along with three officers in an unmarked car. They got out of the car and got the man who was running and began beating him. Both men were then brought to the same place and the beatings continued in an area between the car and a store front.

At that point, Mr. Carter, who had been unobserved all the time, walked across the street and said, in a loud voice, as he was some distance away, "Gentlemen, is not this the reason why we are holding demonstrations in Paterson?" He then continued to walk east, toward a diner, near the place where he works. In a few minutes, the officers came along in their cars. One of them said, "Come over here, Carter, I want to speak to you." Carter answered, "I don't want to speak to you. I shall report what I saw to your superior officer." At this point, the officer said, "Carter, you are under arrest." When he asked, "Why", the officer said, "We don't have to tell you." It was not until he got to Police Headquarters that he found out that he was charged with interfering with an arrest. Carter stated that when the police officers fell upon the two men and began beating them, they never told the men that they were under arrest.

Because Mr. Carter told a different story, the Prosecutor brought up reinforcements by bringing in the other two officers who corroborated each other.

Other than Mr. Carter, we had no witnesses. When we first filed a notice of appeal in this matter, we wrote to Mr. Carter and asked him to come to the office to discuss the case so that we could line up possible witnesses. This was followed up with another letter. We wrote to your office and told you about it on September 10th and sent Mr. Carter a copy in the hope that he would come to our office. Finally, we made a motion to withdraw from the case, of which we sent him a copy by certified mail, but which he did not get because he was supposed to pick it up at the post office, not being home when the letter carrier arrived. At any rate, he finally came in and gave us the facts. We went promptly the next day to the Passaic County Jail in an effort to interview the two muggers, but by that time they had been indicted; they had pleaded guilty to their indictment; and had been sent to their respective reformatories.

To have attempted to bring them in as witnesses, which I could have done, would have been folly unless I had first met with them, to learn what they were prepared to say and how far they were ready to cooperate with us against police officers. To have met with them would have meant missing two days in traveling to different reformatories, and running up expenses for CORE which we didn't think were warranted, particularly as in this State, persons convicted of crime are subject to interrogation about their criminal record, which is brought out to affect their credibility. The net result is that such persons are not believed. Pitted against police officers, it was the sheerest folly to expect any court to believe criminals against the testimony of police officers.

The only objective witness we could have had was the victim who had been mugged and who was present while all this was going on.

When Mr. Carter came to the office, he felt that he could get the testimony of this victim. However, when the showdown came, we could not get him. The victim was a Puerto Rican, and in order to reach him, he would have had to get in touch with the head of a certain Puerto Rican organization in this City. It seems that the victim was reluctant to come to Court to testify against the police because he didn't know what retaliation the police would visit against him.

The net effect was that we had the testimony of five officers, saying one thing and the testimony of Edward Carter, saying another. Whom was the Judge going to believe? I am sure you know the answer.

I did interview two character witnesses on behalf of Mr. Carter. In this State, a character witness testifies, not to his personal knowledge of a particular defendant, but to the reputation of that defendant in the community. One of these character witnesses, a Negro Reverend Roberson, though he had known Mr. Carter for a number of years, and knew his father very well, had no idea of what Mr. Carter's reputation in the community was. The other character witness, Reverend Tow, White, had known Mr. Carter for many years and did know of his reputation in the community. It seems that some people consider Mr. Carter very sincere, very idealistic in his efforts in the civil rights cause. Others distrusted him and considered him an opportunist; one who lacked tact. I did not think it was wise to call either of these two as witnesses.

At the conclusion of the trial, when both sides had rested, the Judge made findings of facts, since there is no jury in a de novo trial, on appeal from the Municipal Court.

As we expected, he found the defendant guilty. The Court listened to the statement that I made on behalf of the defendant, prior to the imposition of sentence. I pointed out that Mr. Carter is not opposed to the arrest of criminals, people who have committed wrongs, nor to their punishment according to law. What he **does** object to is to have the police, who are armed, beat unarmed men without provocation.

Mr. Carter made a statement in his own defense, some of which was written up in the press, of which I enclose clippings from the local papers. It seemed to me that the Judge would consider Mr. Carter's remarks inflammatory, because Mr. Carter assailed the system and stated that it was really the Judge who was on trial and not he, Carter. He went so far as to say that if it was necessary for him to go to prison, he was ready to go to jail.

The Judge imposed a sentence of $100 fine, the costs of appeal and 364 days in the Passaic County Jail, but the jail sentence ~~is~~ was suspended. The Municipal Court had imposed a fine of $100, which had been paid. Therefore, there was no additional fine. When I filed the appeal, I had paid $15 so there was only an additional $7.75 to be paid for costs. Mr. Carter stated he would not pay the costs but would go to jail. But when the Court pointed out that I had already paid $15 and that I was liable for the balance of $7.75, there was no further problem because I paid.

I am making two motions which I hope to complete today or by tomorrow at the latest. One motion will be to reduce or change the sentence on the ground that it is excessive, considering the offense charged; the other motion will be to set aside the judgment on the ground that the Court had no jurisdiction to sit when the Judge was disqualified. I shall let you know of the outcome of this motion which will be returnable on January 14th.

A defendant, on conviction, has ninety days within which to appeal from the judgment of the County Court to the Appellate Division. On the facts themselves, where the evidence is five policemen against one defendant, probably no Court would have ruled otherwise. However, that the Judge was disqualified from sitting, deprived him of jurisdiction and, therefore, we feel that the whole proceeding~~s~~ ~~were~~ was void of initio. If we were to appeal at all, we would recommend an appeal on that point and on the excessive sentence. In that way, we do not have to go up on the stenographic transcript of the record, which would make the appeal far more costly.

Very truly yours,

Esther S Frankel

FRANKEL & FRANKEL

ESF/br
cc: Mr. Edward Carter

Herb

LAW OFFICES
FRANKEL & FRANKEL

LEOPOLD FRANKEL
ESTHER STRUM FRANKEL

262 MAIN STREET
PATERSON, N. J. 07505

523-4600
AREA CODE 201

JAN 17 1966

January 14, 1966

Congress of Racial Equality
38 Park Row
New York City, New York

Attention: Carl Rachlin, Esq.

Re: Edward Carter

Dear Mr. Rachlin:

Supplementing our letter to you of December 29, 1965, we appeared in Court this morning before Judge Rosenberg, on two motions that we had made, viz.:

1. Motion to set aside the verdict, because the Judge was disqualified from hearing the matter under NJSA 2A:15-49(b) which reads as follows:

> "No judge of any court shall sit on the trial of or argument of any matter in controversy in a cause pending in his court, when he:
> . . .
> b. Has been attorney of record or counsel for a party to such action; or
> . . ."

2. Motion for reduction of sentence, on the ground that the sentence imposed is cruel, unusual and excessive, considering the charge and the testimony adduced at the trial, etc.

Perhaps you can guess. Both our motions were denied. We now have three months from December 22, 1965 to appeal from the judgment and sentence of the Court and the denial of motions. The time from December 31, 1965, when our motions were made, until today, fourteen days, are eliminated from the count, as during this period the time for filing appeal was tolled. Therefore, we have until April 5th within which to file a notice of appeal.

If it is the intention of CORE to appeal the matter, my recommendation would be to appeal promptly. If it is not the intention of CORE to appeal, then we can forget the whole thing. A conviction under a disorderly person's charge is not considered conviction of a crime in this State, so that at any time that Mr. Carter would want to apply for a job and is asked on the application, "Were you ever convicted of a crime?", he could truthfully say, "No."

If an appeal were taken, my recommendation would be to appeal only the point dealing with the Judge's disqualification and the sentence. If we appeal on the merits, we shall lose without doubt, as it boils down to the testimony of five policemen against the word of one defendant, without witnesses for the defendant.

If an appeal were taken, the filing fee for filing notice of appeal is $25.00. One hundred dollars must be deposited as security for costs. Then, there is the question of obtaining the transcript of the trial. Inasmuch as we would not appeal the whole trial, the transcript would be limited to the question of the Judge's disqualification and the sentence, so that the transcript would be minimal, probably not more than $25.00.

Instead of printing the minimal transcript and the brief on appeal, we could use the Ozalid method of reproduction, the cost of which is only $1.00 a page, so that counting the brief and appendices (the record) the expense of the brief would be between $50-$75. Then, there would be the question of my fee, for which there would be a charge of $300.00.

Whether or not you should appeal depends, first of all on finances and second of all how CORE and Mr. Carter feel about it. I do know that there is no decision in this State dealing with the disqualification of a Judge before whom a City or one of its departments appears, for whom he was former counsel.

At this time, I am enclosing my bill for services rendered and for disbursements.

Very truly yours,

Esther S. Frankel

FRANKEL & FRANKEL

ESF/br
Enc.

cc: Mr. Edward Carter

Herb

LAW OFFICES
FRANKEL & FRANKEL

LEOPOLD FRANKEL
ESTHER STRUM FRANKEL

262 MAIN STREET
PATERSON, N. J. 07505

523-4600
AREA CODE 201

January 14, 1966

Congress of Racial Equality
38 Park Row
New York City, N. Y.

att: Carl Rachlin, Esq.

- to -

FRANKEL & FRANKEL

To Professional Services Rendered:

Re: State of New Jersey vs. Edward Carter

Instituting appeal from Paterson Municipal Court to Passaic County Court;

Preparation of order designating date of hearing;

Preparation of notice of motion and supporting affidavit to be relieved as attorney for defendant-appellant; (motion withdrawn)

Office conferences with:
a) Defendant - Edward Carter;
b) Possible witness - Reverend Roberson;
c) Possible witness - Reverend Tow;

Appearance in court for trial, Oct. 15, 1965, which was was held but was adjourned at 12:30 P.M.

Two days of trial - December 21st and 22nd, 1965;

Motions made: a) to set aside the verdict on the ground that the judge was disqualified;
b) To reduce the sentence.

Incidental correspondence and /or telephone calls to Clerk of the Court; to Edward Carter; to C.O.R.E.

$250.-

To Disbursements:

Filing notice of appeal	$15.00	
Costs on appeal assessed by the Court	7.50	
Additional postage, including certified mail to Edward Carter	.75	23.25
Total Due		$273.25

546

SEDFRE

STATE OF NEW JERSEY vs SMITH, LOUIS S., HERBERT E. CALLENDER, ET AL, 1964-1967
(LEGAL PAPERS)-(TRENTON CASES - DISORDERLY CONDUCT)

Folder 23

State Historical Society of Wisconsin

Please Retain Original Order

MERCER COUNTY COURT
LAW DIVISION - (Criminal)
App. 19-64 (987)

STATE OF NEW JERSEY :

Plaintiff, :

-v- :

LOUIS S. SMITH, HERBERT E. :
CALLENDER, MARVA L. AMIS,
LILY R. LEWIS, WILLARD D. :
CRITTENDON, and JOYCE L.
SCHURIK, :

Defendants. :

- - - - - - - - - - - - - - - -

Trenton, New Jersey
January 13, 1965

BEFORE:

HON. J. WILSON NODEN, J. C. C.

APPEARANCES:

EDWARD J. PHENLAN, ESQ., ASSISTANT PROSECUTOR
For the State.

MESSRS. FOX YANOFF & FOX
BY: DAVID I. FOX, ESQ.
For the Defendants.

Edwin Silver
Certified Shorthand Reporter
1501 Parkside Avenue
Trenton, New Jersey, 08638

Telephone: (609) 882-3118

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Witness	Direct	Cross	By the Court
Frank V. Walsh, Jr.	8	12	36

MR. PHELAN: Mr. Fox just informs me that, as the Court is aware, this is an appeal which emanates out of the Municipal Court in the City of Trenton, wherein six individuals were charged with a violation of 2A: 170-28 and 2A: 170-29 (2-b).

Five of the defendants are present here in court; namely Louis S. Smith, Marva L. Amis, Lily R. Lewis, Willard D. Crittendon, and Joyce L. Schurik.

I understand the defendant Herbert E. Callender is not present in court. I understand likewise--and please correct me, Mr. Fox, if I am in error--that he was just apprised of this situation, that this particular individual has had to appear before another court in the New York jurisdiction.

THE COURT: Have you talked to this defendant, Mr. Fox?

MR. FOX: No, I have not, sir.

What has happened is this was first brought to my attention that there might be some need for him to appear in New York City on Monday, I believe it was. Today, of course, is Wednesday.

I called the office in New York, where I know Mr. Callender can be reached, and I was advised yesterday that there would be no conflict and that the matter would be taken care of the first thing in the morning in New York to the best knowledge of that office and that he would be here in time for this hearing.

THE COURT: Why don't you do this: Why don't you call and tell them that we will be here all afternoon and perhaps call the court in New York and tell them our situation here and ask them if they can expedite his appearance in New York, and I think we should proceed now with the other cases.

MR. FOX: Call now, is that your suggestion?

THE COURT: I would think so. I mean, if the man were under the impression as recently as yesterday that whatever he had to do in New York would be completed early in the morning, then I would think there is still that possibility to get him here.

Did you talk to him today?

MR. FOX: No, I have not spoken

to him today. I just found out about this about half an hour ago.

THE COURT: You too assumed he would be here?

MR. FOX: Yes, I did. I, of course, came from Newark, but I was just told.

It can't do any harm to call, and it might do some good.

THE COURT: He might be able to get here by this afternoon.

MR. FOX: I am a little pessimistic about the results because one of the defendants advised me that it would be three o'clock before his case would be reached.

THE COURT: I think also you ought to call the court in New York and inform the court that we have several police officers here and several of your own defendants, whom I assume have to make a living, too. It's unfair to bring them in again. They have lost their day, your own clients have lost their day.

MR. FOX: That's true.

THE COURT: And all of us, too, and I think we ought to proceed perhaps on the basis that he will be here by three o'clock.

MR. FOX: I will call now, if that's what you're suggesting.

THE COURT: Do you agree?

MR. FOX: I agree that there is nothing to lose by calling, and if he can be here by the end of the day in time to proceed it will help matters. We can proceed now with the others, and I don't think there would be any disadvantage as to his missing the initial presentation of the case.

I will call now.

THE COURT: We will take a five minute recess.

Incidentally, I might say at this point that we are going to break at twelve and then come back and sit from two to four. I have another case I must hear at twelve.

(A recess is taken.)

MR. FOX: Your Honor, as you suggested, I called the office in New York where Mr. Callender can ordinarily be contacted. I could not get a definite answer since they were uncertain as to his exact location.

However, a man there now is attempting and will undoubtedly be able to give me a definitive answer at the noon recess, and in view of this and in view of the fact that as I see it and as I observe the case in the Municipal Court, Mr. Callender's testimony will not vary substantially in any degree to the testimony of any of the other defendants.

It seems to me that we ought to go ahead now with the hope and perhaps the probability that he will show up by the end of the day, but as to whether or not he will show up I can only say that I am going to speak to the office in New York, and they are checking now.

I spoke to the General Counsel for CORE, and he is making a check now and he will advise me.

THE COURT: All right.

MR. PHELAN: The position of the State is this: This case being a quasi criminal matter, recognizing the basic principle that we cannot try a defendant in absentia, I would, number one, move for a dismissal of the appeal as to this particular defendant. Secondly, I would then move for the proceedings as against the five who are present here in court.

THE COURT: Well, at this time I will deny your first motion and ask you to proceed on the other five.

MR. PHELAN: Very well, sir.

Your Honor, may I call Mr. Frank Walsh.

FRANK V. WALSH, JR. sworn:

DIRECT EXAMINATION BY MR. PHELAN:

Q Mr. Walsh, where do you live?

A 608 West State Street, Trenton, New Jersey.

Q What is your profession?

A By profession I am an attorney.

Q Mr. Walsh, do you hold any elective position with the City of Trenton?

A Yes, sir. I was elected as West Ward Councilman, and I am president of the Trenton City Council.

Q The City Council is the governing body of the municipality of the City of Trenton?

A Yes, it is.

Q Directing your attention to the evening of

November 5, 1964, in your official capacity as president of the Council did you have occasion to convene the Council in group?

A Yes, sir. By the administrative code the Trenton City Council meets in a public meeting the first and third Thursdays of each month.

Q I take it that November 5th was the first Thursday?

A Yes, sir.

Q Now, during the course of that public meeting, did you have occasion to call upon members of the City Police Department for the purpose of maintaining order?

A Yes, sir.

Q Now, will you please relate to this Court exactly what transpired at that particular meeting.

A Yes, sir. Also under the administrative code we have a sergeant at arms, who normally is designated by the director of the Department of Public Safety, Mr. Mc Bride, and he is usually a police officer; in fact, invariably has been a police officer.

On this particular night we had an extensive docket, and included on the docket were resolutions in connection with the city's urban renewal procedures, and it dealt with Area 3, or what is known as Area 3, Fitch Way, and during the course of the meeting we introduced a resolution which would in effect approve the city's problem for relocation of the people who live in Fitch Way 3, and although a public meeting wasn't required, because of the importance of this matter we did have a public meeting.

During the course of this meeting there was a gentleman, who was a resident of the area, who asked to be heard. His name I don't recall. During the course of his testifying I noticed a disturbance, a noise, which was obvious to me that it was someone speaking in a much louder than a normal tone, and this was over to my far left. I rapped the gavel and indicated to the citizens in general that it was a public meeting and for people to be heard there had to be reasonable quiet in the chambers and that the meeting had to be conducted with order.

Very shortly thereafter, I'd say within a minute, I heard someone speak out loud, and I looked over and there was a gentleman, whom I didn't know at the time, but since I have come to learn his name was Mr. Callender, and then I addressed myself to Mr. Callender and the people sitting near him and indicated once again that if there were further disturbances I would have to ask the individual involved to leave and, if necessary, have the sergeant at arms remove him.

Immediately after I said this, Mr. Callender said-- and I can remember it fairly vividly and I think pretty accurately--"we haven't begun to disturb your meeting yet." And with that I asked the officer to remove the gentleman, Mr. Callender, and after that I noticed Officer Downing, who is present here, walked over to him and talked to him. I don't know the nature of the conversation. But after perhaps fifteen or thirty seconds he left Mr. Callender and walked to the back of the chambers where there was another police officer and together they came over, one on each side of Mr. Callender, and once again there was some conversation I think, but I don't know what it was, and with that there were several people who started to sing "Freedom," sing it three, four, five times, and with that the people sitting on either side of Mr. Callender locked their arms with his, and Mr. Callender I think then, as I recall, slid down in his chair and immediately thereafter one of the officers grabbed him under the armpits and the other by the feet and carried him out, and when he was almost out--

Q When you say "out"--

A Out of the City Council chambers, approximately five or six people got up and left with him, and when the officers had him outside in the immediate corridor outside of City Council chambers he slid down on the floor, and the other people who left sat around with him in a circle right in front of the door with their arms locked once again, and I observed this perhaps as long as two minutes, and then the city clerk left, and I subsequently learned, to call the police station for additional help, and he came back, and then shortly thereafter the officers, in order to prevent any further noise from getting into the chambers, closed the doors.

As best I recall that's just about what happened.

Q That's the complere observation that you made of this particular incident?

A As I recall now, yes, sir.

MR. PHELAN: No further questions.

CROSS-EXAMINATION BY MR. FOX:

Q Mr. Walsh, when did the activities of the man, whom you subsequently determined was Mr. Callender, first become known to you? When were they brought to your attention?

A I'm sorry, sir, I didn't understand the question.

Q When did you first notice on this night of November 4, 1964 the man who later was identified to you as Mr. Callender?

A My best recollection would be that this occurred maybe about half an hour after the meeting started, which was at eight o'clock, so that my first observation was approximately eight-thirty, as best I can judge.

Q What activities did he engage in that made you notice him? What did he do?

A There were three separate occasions, sir.

First, I heard voices from the far left in the vicinity where Mr. Callender was sitting and they were at that time sufficiently loud that I couldn't hear this gentleman who was speaking. I'm pretty sure the gentleman was speaking at the time. Mrs. Ruth Lewis I think proffered some information to the City Council immediately before him, as best I can recall, and it was then that I rapped the gavel and I said, "Please, we must maintain silence in order to have an orderly meeting," and shortly thereafter, perhaps thirty seconds, perhaps a minute, I heard a voice and I happened to have been looking in the general direction where Mr. Callender was sitting and I noticed that it was Mr. Callender who said something. What the words were, I don't know.

And with that I admonished generally the citizens to please maintain silence so that an orderly meeting could be conducted, and immediately thereafter he said, "We haven't begun to disrupt your meeting yet."

Q So the first time that you heard him, or heard anything was shortly before you had admonished the citizens to maintain silence; is that right?

A Yes.

Q And you heard some noises from the left side as you faced the audience?

A It would be the right front side of the chambers.

Q But your left?

A Yes, sir.

Q Is it true then that you noticed among this group one of them was louder than the others?

A Not at this time.

Q Then the first time you heard the voices you didn't pick out any one person that you recognized?

A No, sir.

Q How soon after you first heard these voices did you pick out the one? Did one voice come to your attention that was louder than the others, and whose voice was Mr. Callender?

A This was the second time that I heard it and, as I say, my best estimate is maybe 30 to 60 seconds.

Q Was this after your admonition?

A After my first admonition, yes.

Q You don't remember what he said then; do you?

A No, sir.

Q But you did hear a voice louder than the others, and that was Mr. Callender's?

A Yes, sir.

Q Was his voice a voice that was raised so much as to disturb your orderly conduct of the meeting at that time?

A I would say yes, sir, in my own feeling it was certainly loud enough that I couldn't hear the gentleman who was speaking to the City Council and to the audience through the vehicle of a microphone.

Q But before he spoke, could you hear him then?

A Before he spoke when, sir?

Q Before this initial noise by Mr. Callender could you hear the man who was speaking then?

A Yes, sir.

Q So that the only voice that was raised to interfere with your conduct of the meeting was Mr. Callender's at that time?

A At that time, yes, sir.

Q When did you hear Mr. Callender's voice after that? Was that when he said something to the effect that we haven't done anything?

A "We haven't begun to disrupt your meeting yet."

Q That was the second time?

A That was the second time I heard his voice.

Q Was that all that you heard, the voice?

A I heard his voice twice.

Q You testified you heard it before?

A Yes.

Q So this was the second time you heard his voice?

A Yes, sir.

Q And he said--

A "We haven't begun to disrupt your meeting yet."

Q How soon after you heard him the first time did you hear him the second time?

A It was almost immediately. It would be a matter of seconds then.

Q Was it at this time that you asked that he be removed, after you heard him the second time?

A Yes, sir.

Q Did the meeting stop? Did it come to a temporary halt then?

A No, sir. As the officers were removing Mr. Callender there was noise. The noise, as best I recall, in pulling him out of the seat was audible to me, and there was some conversation.

Q Maybe I didn't make myself clear, Mr. Walsh.

After you said to the officer that you wanted Mr. Callender removed, you didn't continue then with the ordinary process of the meeting; did you? I take it the meeting ceased because--

A Sir, this is the very point I am trying to explain.

Q I'm sorry. I didn't mean to interrupt. Go ahead.

A Well, that's all right. At least I am giving you my reaction.

When this occurred with Mr. Callender I could sense with myself and my colleagues and the people in the chambers an air of apprehension. I felt, and I felt the others felt quite tense. I was concerned that perhpas this episode could cause further problems. This was hypothetical. This was a thought on my part and I wasn't sure.

I told the gentleman speaking at the microphone that "I'm sorry that we can't hear you, would you please speak louder."

This is during the time that Mr. Callender was being carried out. So he did start to speak loud enough that he could be heard readily above the noise of removing Mr. Callender, and with that the people in the chambers who were turned and were watching Mr. Callender being carried out then gradually, one by one, few by few turned around and started paying attention to the gentleman who was talking to City Council and to the people in the chambers, and it was my hope that by doing this it could avert any further difficulties.

Q Well, you don't remember the name of this man who was speaking; do you? Was he a Negro gentleman?

A Yes, sir. I'd recognize him if I saw him again. He has been before City Council on two or three occasions.

Q It's my understanding then that immediately after you asked the officer to remove Mr. Callender you continued the meeting as it would normally be continued?

A Not as it normally would be continued.

Q But it continued?

A Yes.

Q Did you ask that the man speaking continue to speak?

A Yes, sir, but to speak louder because he was speaking in competition with the removal of Mr. Callender.

Q Was the meeting interrupted in any way after--let's say within ten minutes after you ordered the removal of Mr. Callender?

A I would say no, sir, not at that time because the officers had closed the doors. Mr. Callender and five or six others left with him and at that time they were in a circle immediately in front of the double doors of the council chamber, and there was noise then, voices--I don't know who it was--but I could hear them and it was disruptive at that time, and the police officers then closed the doors, and from that point on I don't know what happened.

Q But in spite of the disruption the meeting continued?

A Yes, sir.

Q I take it that the only interruption of your meeting that occurred after Mr. Callender's statments was the normal break that you would have for a recess or something like that?

A No, sir, we did not recess.

Q You don't recess?

A Well, we do from time to time.

Q I mean to bring it to a conclusion without recess.

A Yes, sir.

Q There were no breaks?

A No, sir.

Q So that there was no interruption in the meeting after this outburst or statement by Mr. Callender?

A Except for the noise created and the attention that he drew in being carried out and the five or six people who then got up as he was being carried out and walked out to the hallway immediately in front of the council doors and they sat around with him in the chamber. This was noisy. It did distract the people who were present from what was going on before the City Council. They watched what was going on.

Q Apart from the noise, the Negro speaker continued to speak?

A Yes, sir.

Q How soon after Mr. Callender was carried out were the doors closed again?

A I don't think any more than five minutes, sir; perhaps less.

Q So that they were open for five minutes. I take it they were closed before he was carried out?

A No, sir. They were open.

Q They were open?

A Yes, sir.

Q Then they were closed five minutes after he was carried out?

A Within five minutes.

Q Did you observe who closed them?

A I don't recall, although I could speculate if you wish.

Q I'm sorry, I didn't hear you.

A I say I don't recall, but I could speculate if you wish.

Q No. I just want to know what you saw.

I take it you observed the course of Mr. Callender's sojourn, if you can call it that, from his seat to the spot in the hall where he was taken?

A Yes, sir.

Q You observed where he was placed down in the hall?

A Yes, sir. Although mh recollection doesn't tell me now where precisely in the hall. It was near the door.

Q Was it the two patrol en who took him out?

A Yes, sir.

Q I take it they dragged him out?

A He didn't go of his own accord. One officer held him under the arms and one by the feet and they carried him out.

Q You observed where he was put down out in the hall?

A Yes, sir.

Q He was left where the partolmen put him down I take it?

A I know the officers had to stop once on the way out to regrip him.

Q He is a heavy man; isn't he?

A Yes, he is a pretty good sized chap.

Q So I take it they regripped him because he was heavy and he was struggling?

A I don't think he was struggling, no. I think they let him down the hallway.

Q Apart from what you might imagine, was he put in the hallway as you observed him in a position where the officers left him, or was he put in a position where he walked to? Do you follow me?

A I don't think he walked at all.

Q So the spot in the hall that he ended up at, as you observed him, was the spot where the officers put him down?

A Yes, I'd say that.

Q Did you observe the other people who were in that general section of the auditorium who went and joined him? Did you notice them as they moved out?

A I am not sure that everyone left from that immediate area. I have got a feeling that somebody was sitting in the middle righthand side, but I'm pretty vague about that.

Q Did you observe any people go out to join him?

A Yes, sir. Just about the time they got Mr. Callender out of the door, or were about to get him out of the door, about five people--I would guess five or six, but I understand it was five people--got up and left and walked out, and Mr. Callender at this time was sitting down, and they sat down next to him and formed a circle and they linked their arms.

Q When you say "formed a circle," do you mean that he was in the center of the circle?

A No, sir. He was part of the circle.

Q Did they face inward or outward when they formed the circle?

A I don't recall, sir.

Q This was outside of the open chamber doors?

A Yes, sir.

Q How many doors are there?

A Two large doors, similar to the ones here.

Q Do they open inwards or outwards?

A Outwards.

THE COURT: Excuse me. Is this the City Hall chambers, second or third floor?

THE WITNESS: Second floor, yes, sir.

Q You say you didn't see who closed the doors. Did you observe the doors when they were being closed five minutes or so later?

A I have a recollection, but it's not very vivid. I remember the doors being closed.

Q You are not sure whether or not you saw them actually being closed?

A I'm pretty sure I did, but I don't know who closed them.

Q Do you remember if it took them any time to close them? Were they closed as they would normally be closed?

A I'd rather not answer because I'm not sure.

Q You're not sure?

A No. I've got a feeling, but I don't think it's good evidence.

Q Well, you don't recall anything unusual about the closing of the doors; do you?

A Well, at this time I was trying to keep control of the meeting and to get this gentleman who was speaking to speak louder, so my attention at this time--

Q But you don't remember quite clearly. You were primarily interested in the conduct of the meeting, not what went on in the hall?

A Yes, sir.

Q In your conduct of the meeting did you notice--you know the doors were closed--did you notice any unusual disturbance when the doors were closed?

A Well, I couldn't hear or see because the doors were closed. After they were closed--

Q The question is: You know they were closed?

A Yes.

Q Did the closing of the doors interfere with your meeting?

A I don't recall that, sir.

Q You don't see Mr. Callender here today; do you?

A No, sir.

Q Did you watch what went on in the hall at all between the time Mr. Callender was deposited where he was deposited and the time the doors were closed?

A I can't remember whether I actually concentrated on what was going on. I think my attention was probably divided. But I do remember seeing the people who left sit down on the floor.

Q I'm sorry, I didn't get that.

A I do remember seeing the people who left as Mr. Callender was being carried out sit down on the floor.

I'd like to point out, now that I think of it, the observation that I made of it that they locked their arms is something that I learned later. I don't remember seeing them when they locked their arms.

Q You're speaking now in the hall?

A Yes, sir. I remember seeing them sit down, but I don't remember the locking of the arms.

Q Did you see them lock their arms at any time?

A Only when Mr. Callender was first being removed from his seat. People on either side of him put their arms through his.

Q How many people?

A One on either side.

Q Two people?

A Yes, sir.

Q So during the time that Mr. Callender was outside and you were conducting the meeting, it's true that you didn't observe what went on out there? Or if you did, I'd like to know what you observed.

A Well, as I mentioned earlier, my only observation I remember the officers taking him out. They put him down and he sat on the floor, and almost instantaneously the other people who left, whom I mentioned earlier, arrived maybe slightly later after he sat down, and they sat down on the floor and I saw them forming, at least to me what looked like a semi-circle. I did not see them lock their arms.

Q That's pretty much all you remember of what happened outside; is that correct?

A I was wondering if they were singing "Freedom" again, but I don't remember. But there was conversation and genuinely, sir, there was a disturbance. There is no question about it.

Q Now, perhaps you could describe the general layout of the chamber as you face it, particularly describing the location of the doors and the means and directions and aisles people would use to get to the doors. Could you do that for me?

A Well, the chamber is much like this courtroom. The council sits against the wall opposite the doors as you walk in. The council would be facing the rear door. The president of the council sits in the middle, and the six councilmen on either side of him.

Immediately in front of the council president there is a microphone on a lower level, at which this gentleman I mentioned earlier was speaking.

The seats are arranged in sort of a fan-like fashion and, I am guessing, maybe 250, 300 seats.

There is a middle aisle and then a side aisles on either side, and there are windows on either side of the chamber.

As I say, the door was directly in the middle and the dais is where the council sits.

Q How many aisles are there to get out?

A There is a center aisle and then two aisles on either side.

Q Did anybody have any trouble getting out at this time who wanted to get out?

A At which time, sir?

Q Well, during the time that Mr. Callender was ordered to be taken out by you and the time the doors were closed?

A I don't think anyone was prevented from using these aisles.

Q Did anybody complain to you that he wanted to get out and couldn't get out?

A No one complained, no, sir.

Q Did they indicate to you that they wanted to get out but couldn't get out?

A No, sir. I know that Mr. Maziarz, the city clerk, left at some time during this interim, but the people were sitting out front of the doors in such a way that I would say they were pretty much covering the entire passageway, which would be perhaps not quite as far from here to that wall, which I imagine is 14 feet.

Q But the meeting did continue during this time?

A Yes, sir.

Q So that there was no general exit by the public?

A No, sir.

Q You say Mr. Maziarz is your clerk; is that right?

A Yes, sir.

Q Did he leave at your direction?

A No, sir.

Q Do you know what caused him to leave?

MR. PHELAN: Your Honor, Mr. Maziarz is here and I think he would be the best witness to testify as to that.

MR. FOX: Yes.

Q How long was he away?

A I don't recall, sir. Briefly. I'd say less than five minutes.

Q Did he remain at the meeting after he returned?

A Yes, sir.

Q Did you observe him as he left?

A I don't recall. I probably did, but I don't remember now.

Q When did the meeting start? About eight was it?

A About eight; maybe shortly thereafter.

Q About how many people were in the hall?

A A hundred and seventy-five perhaps.

Q I didn't hear you.

A About 175. Pardon me. I have got a sore throat.

Q How many speakers had actually taken the stand after this issue as to relocation was set forth?

MR. PHELAN: Your Honor, I recognize that this is cross-examination and that counsel is granted great leeway. However, what transpired and the number of speakers that took the rostrum in the City Council chamber after this particular instance I don't believe has any bearing on this situation.

MR. FOX: Sir, I was directing that question as to what happened prior to this instance, and not before, and I don't know if your objection still stands.

MR. PHELAN: Well, it would if it's going to be related to the particular instance. I'd hate to see this questioning go as to what each councilman had for breakfast, or something like that.

THE COURT: I will permit this question. I think it's a fair question.

A Well, I am sure that there were others, sir. The only ones I can remember are Mrs. Lewis and the gentleman who was at the mike at the time.

Q So you remember there was at least one speaker?

A Prior, yes.

Q Was this the first order of business of the meeting?

A No, sir. There were several other things.

Q Well, how soon after it started was this issue raised??

A About half an hour after.

Q I'm sorry, I didn't hear you.

A About half an hour, as best I can estimate.

Q Was this the primary topic of the evening?

A Certainly there was heavy emphasis on this. This is impartant to the City of Trenton.

Q The meeting was pretty much called then--correct me if I'm wrong--to air publicly this resolution?

A That certainly was one of the purposes.

Q Wasn't this the main purpose of it?

A No, sir. This meeting started approximately eight o'clock and it didn't break up until almost twelve.

Q You say ordinarily you would not hold these meetings in public; is that correct?

A Sir, this was a resolution and normally we have to pass them in public, yes. It's required at a public meeting. We ordinarily do not have a public hearing on a resolution, as we do for a second reading of an ordinance.

The law requires that we have a public hearing and any interested citizens may then come in and either support or oppose the ordinance, and then after that testimony is presented and there is a motion to close the public hearing as to the testimony on this one ordinance--

Q Is this a resolution we are talking about?

A Yes, sir. And we may have on one or two prior occasions asked for comments from the people who were in the chambers on a resolution, but it is a rare occasion.

Q In other words, when you testified on direct examination that it was unusual to have a public meeting on this issue, you meant this resolution concerning relocation; is that right?

A Yes, sir. But may I say this: At this meeting I would say maybe 30 or 40 or 50 different subjects came up. Everything from first and second reading of an ordinance completely unrelated to this subject matter.

Q Of the hundred and seventy-five people who were there, could you tell whether or not they were directing their attention on this night to this resolution?

A The majority of the people there I would say, yes, they had an interest in this.

Q So that most of the people there, as you observed them, showed that the reason they were there by their actions was to hear what had to be said about this resolution?

A I would agree with you, sir, That would be my impression and recollection.

Q The speakers who were speaking, starting with Mrs. Lewis, to the best ofyour recollection, and at least including the Negro speaker who was speaking at the time this happened, what were they speaking on? Were they speaking one way or the other on this issue? If so, what way?

A I remember the gentleman who was at the microphone at the time this incident occurred had stated that he was a resident of the John Fitch Way area, number 3 area, that he wanted to have an opportunity to find a home in the City of Trenton as good as the one he had on Fitch Way, and I think he implied also better.

Q That he implied what?

A Also perhaps even better.

Q Was he speaking against this proposal or for it?

MR. PHELAN: Just a second, Mr. Walsh.

Again I am going to object.

THE COURT: What's the purpose of this question?

MR. FOX: The purpose is to develop just what the general nature or general behavior of the audience was during this meeting prior to the time of the statements that were made and the alleged disturbance was made to determine whether this disturbance was in fact anything extra ordinary in view of the subject.

THE COURT: Why didn't you ask that question?

MR. FOX: I am trying to

develop through his own observations what happened.

THE COURT: I will sustain the objection on this particular question.

MR. FOX: All right. I will direct it that way, sir.

Q During the time this person was speaking, was there any questioning of him by people on the floor of the meeting?

A I don't recall, but I doubt it. Under our rules of procedure, which I try to subscribe to as strictly as possible, anyone who has a question must direct the question to the council president, whether the question be directed really to a councilman or someone else in the chamber or someone who is proffering information or testimony.

Q Were there any reactions in the audience that you noticed to whatever he said?

A I don't recall. No, sir. It was a normal, orderly meeting.

Q Was there any questioning of this speaker or the prior speaker by members of the council or anyone up on the podium?

A Probably I did, sir.

Q Do you remember anyone else?

A I don't recall, no.

Q How about as to Mrs. Lewis?

A Did anyone ask her a question?

Q Right.

A Is that your question, sir?

Q Yes, that's it.

A Very likely I did.

Q Do you recall if it was likely that anybody else did?

A Well, having no recollection of it, I would say I doubt it.

Q But it's likely that you may have?

A Yes, I would say I did.

Q Did you specifically direct Officer Downing to remove the man, whom you later learned was Mr. Callender, from the chamber?

A Not specifically Officer Downing, I think I said officer or officers; I don't remember which.

Q You don't remember the name of the officer, but you did direct an officer?

A Yes.

Q Do you remember who the officer was?

A There were two present at the same time in the back of the chamber, and I am quite positive I directed it to either one of them. I'm quite sure I said, "Officer, would you kindly take this--ask this gentleman to leave, or escort this gentleman out--" no. "Will you please remove this man."

Q While these people were seated as you observed them from outside in a circle, outside the chamber in the hall itself, did you see other people go in and out of the chamber?

A I don't recall, sir, but I would doubt it.

Q You doubt that you saw it?

A Yes. I doubt that during that time. I know that Mr. Maziarz did.

Q Other than Mr. Maziarz, you doubt that other people did go in and out?

A I doubt it, but really it's a guess.

MR. FOX: That's all, sir.

THE COURT: I have just two or three questions.

BY THE COURT:

Q Do you see these five or six people, whom you described to the Court today, in court today?

A The only two that I recognize are Mrs. Lewis and the young lady sitting to her right. I remember that she was present.

As to the other two individuals, whom I understand are defendants, I don't remember them nor do I remember this gentleman here at the table.

Q Mrs. Lewis is the lady you referred to that had spoken at a time prior to this incident?

A Yes, sir.

May I say this, Judge, that prior to this occurrence I didn't know whom Mr. Callender was. I assumed that he was a resident of Fitch Way or some place in the City of Trenton, and it was not until later that I was told that he was a representative of CORE and that he lived in New York. I didn't see him before, nor did any other councilmany have any inkling that anyone would appear representing CORE.

Q You said there was a song that you heard?

A Yes.

Q When did you hear that in relation to Mr. Callender being removed by the two officers?

A As the two officers tried to remove him from his seat, at that time, if I remember. On three occasions the song "Freedom," just these words: "Freedom," "Freedom," "Freedom" were sung. I don't remember whether it was also done outside, once they got outside of the chambers.

Q You say two of the people who were on either side of Mr. Callender each took the arm closest to him?

A Yes, sir.

Q When the police officers came what did they do?

A I don't remember. I'm sure the officers can testify.

Q How far from the double door outside of the council chamber did this circle or semi-circle occur?

A My best estimate, Judge, is that--in fact, my recollection tells me that whoever closed the door had difficulty closing them because of the individuals who were sitting in the path of the sweep of the door.

Q In other words, you don't know why the doors were closed; do you?

A I think I know why.

Q Why?

A Because their presence out there itself was disruptive and they were making noise.

Q What kind of noise were they making?

A These were voices. I don't know what was said. They were not shouts, but they were loud enough that I could hear them at dais.

Q You didn't ask them to close the door? That was done by someone?

A Yes, sir.

THE COURT: Thank you.

We will have to reconvene at two o'clock.

(The Court recesses at 12 o'clock noon and reconvenes at 2 P.M.)

MR. FOX: Your Honor, on the question of the defendant Herbert Callender, who is not here, I found out at lunch time that he was in fact in New York for sentencing on, I believe, a disorderly persons charge. He did receive a jail sentence there of 60 days.

The attorney who is handling this told me at lunch time that there will be an appeal, and he is now attempting to have Mr. Callender removed from jail pending the appeal. He could give me no estimate of when or if the removal would be successful. So if this hearing does continue to another day, which it appears it might, perhaps he would be available then. He certainly can't be here today.

MR. PHELAN: Well, in view of the representations made to the Court, of course, the Court has already ruled on my motion denying the dismissal of the appeal. I would think that the only practical measure that we could follow is the continuance of the appeal of the present five, dispose of that. We already have part of the testimony.

THE COURT: We may have to

repeat that.

MR. PHELAN: We will have to repeat it as to the individual.

MR. FOX: May I be heard?

We could certainly, without the defendant Callender, conclude this case as to the five, but I can't speculate as to his availability or non-availability. Certainly he is not available today.

As far as the people who are here today are concerned, I have no objection to continuing now, as we have this morning, and on the other hand I leave it in the hands of the Court whether or not there should be an adjourned date.

THE COURT: Let me ask you, if I set this down for a certain day can we dispose of everything in one day from nine-thirty to four?

MR. PHELAN: I would surely hope so.

THE COURT: How many witnesses, as far as you know, would the State have?

MR. PHELAN: I have Mr. Maziarz. There are seven police officers under subpoena.

THE COURT: However, as Mr. Walsh was saying, at least five of those seven were not there most of the time, so presumably their testimony will not be as lengthy as Mr. Walsh's testimony was.

MR. PHELAN: I wouldn't think so. The majority of the officers participated in the removal of these defendants and, of course, they would be here to testify as to the identity of them, and recognizing the fact that it would be cumulative I would still urge upon the Court that the testimony of each of the police officers be taken so that a full and complete record can be established.

THE COURT: I wasn't suggesting that it be done any other way. I was trying to get a picture here, because these appeals from the Magistrate's Court, as you can see, they originally allowed one hour for this case and I would much rather know in advance how much time will be taken to complete this case so that I can plan so that you and the city clerk and the defendants don't have to come back here three or four different days. I am just asking for my own information.

MR. PHELAN: The original case I understand commenced at approximately nine-thirty in police court.

MR. FOX: It started in the morning and ended about seven in the evening.

THE COURT: We can't do much better than start at nine-thirty. It will take at least to four o'clock.

In other words, what I am saying is I was thinking I don't see how we can even finish unless Mr. Fox were desireous of stipulating that the findings for five would also be the findings of the sixth, and this is a quasi criminal case and he can't give that man's rights away.

MR. FOX: I agree with that.

THE COURT: Even if you wanted to, I don't think we could.

So we will put it down for a special day at nine-thirty.

MR. FOX: Shall we suspend now, or can we continue at least fr the two hours this afternoon? Perhaps if we did that we might finish it.

THE COURT: Well, after hearing

Mr. Walsh's testimony it seems to me a lot of testimony is directed to Mr. Callender, who is not here.

MR. FOX: That's true, sir. I'm sure that when Mr. Callender does appear on the new date that you set that he will agree. He will waive any need for his presence as far as Mr. Walsh's--

THE COURT: I'm not sure I want to do that.

All right. That's all today.

I would like both of you to go upstairs now to Mr. Benck and set a firm date for the next hearing.

MR. PHELAN: May I suggest this to the Court: evidently, Mr. Fox is undetermined as to when Mr. Callender would be available in view of the jail sentence he is now serving. If he will ascertain that this week whether the defendant is released on bail pending his appeal in the New York jurisdiction and advise me, I will then communicate with Mr. Benck to set down a certain date.

MR. FOX: I am quite certain we can get him even if he is in jail.

THE COURT: I would prefer to have it set down as soon as possible because it's already a couple of months old and there is no record below.

MR. FOX: I will work that out, sir, with the prosecutor. I'm sure there won't be any problem on the date.

THE COURT: Thank you.

(Whereupon, the hearing was adjourned.)

*** *** ***

I HEREBY CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by me at the place and on the date hereinbefore set forth.

Edwin Silver
CERTIFIED SHORTHAND REPORTER

Date: 5/13/65